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The views expressed in articles printed herein are not to be regarded as those of the Judge Advocates Association or its officers and directors or of the editor unless expressly so stated.

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DISCIPLINE AND MILITARY JUSTICE

By Captain S. B. D. Wood, USN.*

I welcome this opportunity to address you this morning because I hope to better acquaint you with the problems which confront the military services in the administration of military justice. While these remarks will be directed more particularly to the Navy and its experience, they also apply in large measure to the Army and the Air Force. The three services share a single system of jurisprudence and thus may reasonably be expected to have parallel experiences. The Uniform Code of Military Justice, which I shall refer to hereafter as the U.C.M.J.—by its initials in keeping with the modern trend—has been the subject of considerable discussion, public and private, within the services and without. For the most part the comments have been highly critical. They have also, in my judgment, been highly emotional and lacking in objectivity. My purpose is not to criticize the U.C.M.J. nor to praise it, but rather dispassionately to examine what it is that has prompted the criticism. In so doing little resort will be made to statistics. When statistics are applied to manifestations of human behavior they leave much to be desired. There are too many impond-

erables. For some years past we have kept statistics showing the incidence of courts-martial per thousand of population of the Navy. The statistics show that every year the incidence of courts-martial starts to rise sharply toward the end of February, reaches a peak in late March or early April and then drop just as sharply as it rose. What this phenomenon proves has never been discovered. It must be Spring fever.

Among the unrestricted line officers of the Navy, the officers who exercise command as distinguished from the various staff corps and specialists, like myself, there is much dissatisfaction with the U.C.M.J. They consider it too complicated and unwieldy, that it has detracted from command and has interfered with discipline. So before considering what we have it may be well to examine briefly what we had before U.C.M.J., in the Navy, at least.

Prior to the enactment of the U.C.M.J. military law in the Navy was based upon the Articles for the Government of the Navy. These Articles were enacted by the Congress in 1862, were subsequently incorporated in the Revised Statutes and later in the United States Code. They were continued without sub-

* An address to the Criminal Law Section of the American Bar Association at Philadelphia, August 1955. The author, then the Assistant Judge Advocate General of the Navy, is a member of the Board of Directors of the Judge Advocates Association.

stantial change from the time of first enactment until superseded by the U.C.M.J. on May 31st, 1951. The Articles were brief and simple. They provided for all the well recognized military offenses and for those peculiar to the Navy, for courts-martial and expeditious review thereof. There was no intricate legal system nor did the accused have the rights of appeal and representation he now has. The power of a commanding officer to impose punishment at mast, now known as non-judicial punishment, was greater than it is now, excepting that the reduction in such power of a commanding officer at sea is negligible. The Articles contained practically no procedural requirements. Matters of procedure were prescribed by Naval Courts and Boards, a publication generally similar to the present Manual for Courts-Martial.

Naval Courts and Boards was a publication written to be read, used, and understood by laymen. The court-martial procedure therein prescribed was designed and intended to be practiced by laymen. A court-martial guide, that is, a suggested record of procedure, was furnished in meticulous detail. If an officer did not know how to try a court-martial case it was his own fault. Naval Courts and Boards not only explained the elements of offenses but also told the prosecutor how to prove them. A defense counsel was less fortunate.

There can be no question but that the administration of military justice under the Articles for the Government of the Navy was a vastly

simpler matter than it now is. Whatever may have been the faults or the virtues of that system, it is the one under which the Navy operated for eighty-nine years. For you to appreciate fully the complexity of the procedures of military justice under the U.C.M.J., let me apply them to an ordinary criminal case in a civilian court. There is no exact parallel, of course, because some of the procedures are unknown in civilian life.

First, every offense will be tried in a court of record, except some minor misdemeanors comparable to the ordinary run of traffic cases. Second, after warrant of arrest issues and before presentment by way of information or indictment there will be a pre-trial investigation corresponding to a commissioner's or a committing magistrate's hearing. The commissioner will thoroughly investigate the charges and at the hearing the accused will be represented by counsel provided by the state, will have the right to cross-examine the prosecuting witnesses and to call witnesses in his defense. The commissioner having determined that there is a prima facie case, formal charges issue and the case goes to trial. At the trial the accused is represented by counsel provided by the state. Regardless of whether the accused pleads guilty, is convicted upon trial or is acquitted, a complete, verbatim transcript of the record and of the testimony is prepared, at government expense. The district attorney then forwards the record to the governor who has it examined for legality by his attorney general. An

acquittal is reviewed for jurisdiction only and the review stops here. If it survives this examination the case is considered on its merits by the governor, who may among other things mitigate the sentence, order a re-trial, or direct a nolle prosequi. Upon approval, the governor will forward the case to an intermediate appellate court where the entire record is again examined for legality and on its merits. This court has the power to weigh the evidence. Before this intermediate appellate court the accused is again provided with counsel at the expense of the state but this time only if he asks for counsel. You understand that the procedure up to this point has been automatic and that the accused will get the full treatment whether he asks for it or not. Even after a plea of guilty. If an accused is dissatisfied with his conviction and sentence as confirmed by the intermediate appellate court he has the right to petition the supreme court, with benefit of counsel provided by the state and even after a plea of guilty. Review by the supreme court is limited to matters of law and is granted by writ. It should be noted, however, that there is also an automatic review by the supreme court in certain homicide cases, or if the accused happens to be a high official of the state.

When you consider that a procedure substantially similar to the analogy given must be followed for every serious offense, military or otherwise, it is quite evident that some reform is indicated. By "serious offense" I mean one of suffi-

cient gravity to be tried by general court-martial, or by special court-martial if the sentence of the special court included a punitive discharge. During the calendar year 1954 we had 7196 such trials in the Navy.

A thoughtful examination of the subject to determine what should be done to improve the administration of military justice requires that consideration be given to the responsibilities of military commanders and to the mission of the military services. I take it to be self-evident that the military services separately and as a whole exist for the sole purpose of engaging in war, when and if that becomes necessary. Their mission is to win that war. To carry out that mission the troops must be trained not only in their individual specific duties but also to implicit obedience to command, because the war time deployment and use of units of a military service depends upon team effort. Each unit of a service engaged in battle, whether that unit be a ship, a squadron, a division, or a fleet, or a comparable component of the Army or the Air Force, must act as a team within itself and as a part of the larger force.

A homely example of the necessity for team effort in a field with which we are all familiar is that of a football squad. The mission of the squad is to win the game. To achieve that mission each member of the squad must perform his part as one of the team. What success do you think a squad would have if, when the quarterback called the play, a member of the team decided not to participate or pre-

ferred to take off on an expedition of his own?

In a military service it is the responsibility of the commander to see that team effort is obtained. He can no more tolerate deviation from team effort than can the captain of a football team. Far less, in fact, since the results might be disastrous. It is this necessity for team effort that causes military commanders to enforce discipline and to punish infractions thereof. Since the punishment frequently takes the form of a court-martial, it is easy to see why military commanders are inclined to regard courts-martial as an arm of discipline. This as against the classic concept that a court is an impartial forum in which is determined the guilt or innocence of one accused. However, the offenses which cause a military commander the most concern are those relating directly to violations of team effort, infractions of discipline of one kind or another. This brings me to what I believe is the crux of the problem.

Military law is a first cousin to criminal law but its differences are as marked as its similarities. The jurisdiction of courts-martial embraces all the crimes of the United States Criminal Code, some of which are re-defined in the U.C.M.J., plus the Assimilative Crimes Act and in addition includes a body of offenses which are strictly military and which are not crimes at all, in the ordinary sense of the word. Into this last category fall the infractions of discipline, the military offenses that are essential paternal.

To demonstrate the true nature of these paternalistic offenses the following illustrations may be helpful.

Let us assume that your eighteen year old son, John, is a baseball fan of the first water and has planned to witness a big league game on Saturday afternoon. The preceding Friday night at a family conference, over John's vehement protests, it is decided that John will drive mother into the country to visit grandma on Saturday afternoon, because you will be detained at the office. Comes Saturday afternoon and John is nowhere to be found, so you taxi home and drive mother to the country yourself. The fact that you wind up in the country with your mother-in-law drinking iced tea in the shade of a tree instead of sipping high-balls at the club, is purely incidental. But it is not incidental that John has failed to play on the team, has disrupted the family plans and has wilfully shirked his obligations. Translated into terms of military justice what offenses has he committed? He has absented himself from his place of duty without authority, Absent Without Leave and a violation of Article 86, U.C.M.J. He has also through design missed the movement of a unit with which he was required in the course of duty to move, Missing Movement and a violation of Article 87, U.C.M.J. But John's troubles are not over. After an appropriate reprimand you tell him to stay home Saturday night, wash the dishes after dinner and mind the baby while you and mother go to the movies. Upon your return you find

the baby crying, the dishes half washed and John asleep in front of the television. John is now a candidate for a general court-martial, so let us see what additional offenses he has committed. By negligently failing to complete the washing of the dishes he has been derelict in the performance of his duties in violation of Article 92. By sleeping at his post while detailed to guard the baby he has been guilty of misbehavior in violation of Article 113.

My purpose in giving these illustrations is to point out the nature of military offenses and to emphasize that they are not crimes. It does not follow and it is not suggested that they are trifling offenses in the military services. On the contrary, because of their destructive effect upon unity of action and the grave consequences which may affect the whole for the dereliction of a single individual, military offenses are not trivial. Military offenses comprise about 85 per cent of all general courts-martial in the Navy, a higher percentage of special courts-martial and most of the summary courts-martial. Therefore, they are the great bulk of military justice cases in the Navy and, I believe, in its sister services.

The very nature of military offenses would seem to require swift and peremptory punishment, certainly for those not so grave as to approximate felonies or serious misdemeanors. The effectiveness of any punishment administered, particularly as a deterrent to others will necessarily diminish as delays are interposed. The discipline in your

household would surely fall into a sorry state if you had to convene a court, with right of counsel and appeal, whenever one of the children really got out of line. That is over simplification of course, but it may serve to illuminate the problem. The simple, paternal judicial system the Navy knew under the Articles for the Government of the Navy was contrived primarily to preserve order and discipline, i.e., to prosecute military offenses. The Uniform Code of Military Justice and its procedures are adversary in character and more nearly approach the court practice known in civilian life and to criminal prosecutions. A paternal system is not well adapted to prosecute crime and an adversary system is not well adapted to punish any but serious military offenses.

At this point let it be understood that I do not advocate a return to the Articles for the Government of the Navy, nor to any strictly paternal system of justice enjoyed by the Army under former Articles of War. Neither do I think that the Elston Act was far superior to the Uniform Code. In my opinion the U.C.M.J. is here to stay in substantially its present form and this may as well be accepted by the military services. This does not mean that the Uniform Code should not be amended to make it a more suitable instrument for the administration of military justice. Some such amendments have been proposed by the Judges of the U. S. Court of Military Appeals and the Judge Advocates General and are presently before the Congress. The

bills are H.R. 6583 introduced by Mr. Brooks of Louisiana and S. 2133 introduced by Senator Russell in the 84th Congress, 1st. Session. The proposed amendments are based upon experience under the Code, are intended to improve the procedures of military justice and merit support. These bills, which are identical, would correct many of our troubles by simplifying and expediting the review procedure, by providing for a single officer special court-martial the officer being a qualified lawyer, and by increasing the power of the Judge Advocate General to take appropriate action. They would also increase the punishment a commanding officer may impose as non-judicial punishment. I regret that time does not permit of a full discussion of these changes, however, good as they are the query remains as to whether they do not merely trim the branches of our problem in military justice rather than dig into its roots.

Military justice is a hybrid sort of criminal law. It exercises jurisdiction over and punishes those who commit crimes, in which respect it is similar to criminal justice as it exists in civilian courts. It also exercises jurisdiction over and punishes those who commit disciplinary offenses, a condition wholly unknown to civilian criminal courts. The Uniform Code with the proposed amendments will be a reasonably adequate instrument for the military services to use in the prosecution of crime. It is an adversary system patterned upon criminal procedure but in which sufficient consideration has not been given to

the other part of military justice, the punishment of military offenses not criminal and not serious enough to warrant a criminal prosecution. What I do advocate is a clear recognition of the dual character of military justice and a substantial increase in the authority of a commanding officer to impose swift and summary punishment for disciplinary infractions, short of major offenses, without the necessity of resorting to a court-martial.

In expressing the opinions that follow it must be understood that I speak only for myself. They are the views that have crystalized over the past fourteen years during which I have participated in the administration of military justice in the Navy, both under the Articles for the Government of the Navy and the Uniform Code of Military Justice. They do not necessarily represent the views of the Judge Advocate General nor of the Navy Department.

I would abolish the summary court-martial and instead give a commanding officer equivalent authority, i.e., upon members of his command other than warrant officers and officers permit the imposition of confinement not in excess of one month, hard labor without confinement not in excess of forty-five days, or restriction to limits not in excess of two months. This in addition to the punishments now authorized and those proposed by the pending bills referred to above. For officers and warrant officers the bills would extend forfeiture of one half pay from one month to three months and for others add forfeiture of

one half one month's pay. I would also restrict the authority of a commanding officer to impose non-judicial punishment to military offenses only and leave the prosecution of all crime to courts-martial. I would not disturb the present right of appeal from non-judicial punishment nor curb existing power to suspend, set aside, or remit.

Aside from an evident purpose to separate paternal offenses from crime it is in order to explain why. Let us consider the summary court-martial. This is a one officer court usually convened by the commanding officer of a ship or station in the Navy and a comparable command in the Army and the Air Force. The summary court-martial officer is under the command of and junior in rank to the convening authority. Except in rare instances he is also less experienced. He is seldom the executive officer or second in command. To the summary court-martial are ordered for trial those cases which the commanding officer feels require punishment more severe than he can impose by non-judicial punishment but not serious enough to warrant trial by special or general court-martial. It is well recognized that this is why a summary court-martial is ordered and the court is expected to do his duty. Substantially all cases heard by summary court are strictly military offenses. It would appear to me that a summary court-martial is in truth and fact an arm of the disciplinary authority of the commanding officer, that in most cases a trial in its real sense is a fiction and that the facts can be better ap-

praised and appropriate punishment adjudged by the responsible commanding officer than by one of his subordinate and less experienced officers. The only reason he orders a summary court-martial is because his punitive power is inadequate. I think the fiction should be acknowledged and the summary court-martial done away with.

This is not a condition peculiar to the Uniform Code. It was also true under the Articles which preceded it, in the Deck Court which was a court-martial similarly convened and composed. In those days the deck courts were all finally reviewed in the Office of the Judge Advocate General and it was not infrequent to find one in which the accused had pleaded not guilty, in which no evidence had been introduced to prove the offense and in which the deck court convicted the accused. We had about a dozen or so of these a year, not many to be sure against a total of some thirty-one thousand deck courts annually, but it is indicative of the value of a deck court or a summary court-martial as a trial.

In the Army and the Air Force a man may demand trial by court-martial, rather than accept nonjudicial punishment. In the Navy he may not. If the punitive power of a commanding officer were increased to the present limit of a summary court-martial this right could be extended to the Navy. Generally an accused has more to lose than to gain by demanding a trial because he is usually guilty and will be so found with the likelihood of a sentence greater than he would have

received from the "Old Man" and with a record of a court conviction upon his personnel jacket. Remember that military offenses are very simple and easy to prove, at least the paternal or disciplinary ones are. For example, unauthorized absence consists solely of not being physically where one is supposed to be at a given time. Cases of unauthorized absence comprise about three-fourths of all military offenses in the services, varying in gravity, of course, depending upon the circumstances and the length of the absence. While the proportion of convictions by courts-martial is extremely high that is not remarkable considering the simplicity of most of the military offenses and that they constitute the bulk of all trials.

It may be expected that there would be opposition to greatly increasing the punitive authority of a commanding officer in fear that this authority would be abused, that the personnel of a command would be subjected to arbitrary and disproportionate penalties. It cannot be denied that the possibility is there but it is there now and could be exercised through the device of ordering a summary court-martial when non-judicial punishment should suffice. There are martinets in all walks of life, perhaps more in the military than in others because the habit of command tends to make

an autocrat of one. It is my experience, however, that fear of despotic abuse of power is groundless. The usual commanding officer is personally interested in his men, alive to their welfare and reluctant to inflict punishment upon them. He is interested in preserving the team of which he is the leader and he knows that there will be no loyalty up unless there is loyalty down, that without loyalty there is no team. Not long ago an aircraft carrier and its escorts delayed departure from a foreign port and postponed tactical maneuvers for twelve hours because a single enlisted man got involved with the local constabulary under conditions the commanding officer believed unjust, so he would not leave until the man's defense had been arranged. Incidentally, the C.O. was correct and the man was eventually acquitted. That is a striking example of a commanding officer's interest in his men but it is not an unusual sample of the feeling throughout the Navy.

There is a paternalistic feeling on the part of a commanding officer toward his men. The attitude and relationship impels peremptory handling of the refractory. I am suggesting that disciplinary power be made adequate to deal with any but the most serious recalcitrance.



THE ANNUAL MEETING

On August 23, 1955, at the Naval Officers Club, Philadelphia Naval Base, the Association held its annual banquet. About 250 members of the Association and their guests attended. The President, Col. Gordon Simpson of Dallas, Texas, presided and served as toastmaster. Col. Simpson introduced the honored guests which included Chief Judge Quinn and Judges Latimer and Brosman of the Court of Military Appeals, the Honorable Hugh M. Milton, II, Assistant Secretary of the Army for Manpower and Reserve Forces, Gen. Caffey, Gen. Mickelwait, Gen. Hickman, Gen. Kuhfeld, Capt. Wood, and Gen. McNeil. The past president certificate was awarded to Col. Joseph F. O'Connell, Jr., of Boston. Besides Col. O'Connell, other past presidents attending the dinner were Col. Brundage, Gen. Boyd, Col. Hughes, Col. Pirnie, Col. Ritchie, and Col. Hafer.

The principal speaker at the banquet was the Honorable Hugh M. Milton, II, who spoke on the manpower problems of this country with particular emphasis upon the necessity of indoctrinating personnel of our Armed Forces with the American heritage so that they will not fail in an understanding of right principles when subjected to the false propaganda of the enemy.

The annual business meeting of the Association was convened on

August 24th in the Court Room of the United States Circuit Court of Appeals for the Third Circuit. Capt. S. B. D. Wood, Assistant Judge Advocate General of the Navy, and Maj. Gen. Albert M. Kuhfeld, Assistant Judge Advocate General of the Air Force, reported to the members present for their respective services. Chief Judge Robert E. Quinn gave a report on the work and progress of the United States Court of Military Appeals.

During the meeting, the report of the Board of Tellers was read and the following were announced to have been elected to the offices set opposite their names:

- Capt. Robert G. Burke, USNR, New York—President
- Lt. Col. Nicholas E. Allen, USAFR, Maryland—First Vice President
- Col. Thomas H. King, USAFR, Maryland—Second Vice President
- Col. Frederick B. Wiener, JAGC-USAR, District of Columbia—Secretary
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In addition to the above elected officers and Directors, the governing body of the Association for the current year will include Col. Gordon Simpson of Dallas, Texas, and Gen. Oliver P. Bennett of Mapleton, Iowa, as past presidents, and The Judge Advocates General of each of the services, Admiral Ira H. Nunn, Navy, Major General Eugene M. Caffey, Army, and Major General Reginald C. Harmon, Air Force.

In Memoriam

The members of the Judge Advocates Association profoundly regret the passing of the following members whose deaths are here reported and extend to their surviving families and relatives deepest sympathy:

Col. Dorrance D. Snapp of Albuquerque, New Mexico, died on August 7, 1955. Col. Snapp served on an Army board of review and as Staff Judge Advocate of the 14th Port at Southampton, England during World War II. He retired in 1947. Col. Snapp practiced for almost forty years at Joliet, Illinois, before his military service.

Lt. Col. Shields M. Goodwin died of a heart attack at Little Rock, Arkansas, on October 11, 1955. At his death Col. Goodwin was President of the Arkansas Bar Association.

Lt. Col. John A. Doolan died of a heart attack on November 30, 1955, in Paris, France, where he was stationed as a judge advocate of the Air Force. Col. Doolan formerly practiced in White Plains, New York.

Col. Paul L. Anderson of Rogers, Arkansas, died on November 30, 1955.

Lt. Col. Felix A. Bodovitz of Tulsa, Oklahoma, died November 10, 1955.

Judge Paul W. Brosman of the United States Court of Military Appeals died of a heart attack on December 21, 1955.

Jurisdiction, If Any

By Richard L. Tedrow *

It is assumed that by now all lawyers with enough interest in military law to cause them to read this Journal are reasonably familiar with the holdings in *Toth* and *Covert*. If my general discussion here seems somewhat disconnected and rambling it is partially due to the fact that I am dictating the substance (outside of case citations), according to my best recollections, of some items that I discussed in a talk on December 5th before the Institute of Military Law. The necessity for this dictation arises out of the Editor's claim that he has a deadline on sending copy to the printer for this issue of the Journal. He insists that he would like to have some discussion regarding jurisdiction in this issue even though it may not approach a polished product—which he certainly will not get.

Toth is the former Air Force man who after having been discharged was thereafter taken into custody by the Air Force authorities to be tried for an alleged hom-

icide occurring in Korea. After proceedings in the lower courts¹ the United States Supreme Court, on November 7, 1955, held 6 to 3 that the Air Force had no jurisdiction over Toth and that Article 3(a) USMJ was unconstitutional in attempting to subject a civilian to military processes.² While it is of little value, it is of possible interest to speculate that if the late Chief Justice Vinson, with his Steel Seizure dissent, and the late Justice Jackson, with his Nurenberg background, had been alive, it is possible that the case might have been decided 5 to 4 the other way.

At the outset, I wish to make it clear that this is an effort to discuss these jurisdictional problems in the abstract; I will avoid any personal opinions generally, but if they should slip in they are my personal opinions as a member of the Bar and nothing more.

As the holding of *Toth* on Article 3(a) is irrevocably the law, the question of whether we approve of it is unimportant. The important

* Mr. Tedrow, a member of the District of Columbia bar, served as legal officer in the Navy during World War II (Lt. Cmdr.) and has since held a commission as judge advocate officer in the U. S. Air Force Reserve (Major). He currently serves as Chief Commissioner, U. S. Court of Military Appeals.

¹ 113 F. Supp. 330; 114 F. Supp. 468; 215 F. 2d 22.

² U.S. ex rel. Audrey M. Toth v. Donald A. Quarles, Secty. of the U.S. Air Force, No. 3 October Term.

aspect of this holding is its possible effect on the other parts of Article 3, as well as on some of the subdivisions of Article 2. With Article 3(a) gone it appears reasonably clear that if Article 3(b) does not also fall, it certainly is in a precarious position. This latter provision provides that if a discharged person is "charged with having fraudulently obtained" his discharge he can be taken into custody for trial by the military. If the *Toth* case is read in conjunction with the *Flannery*³ case, 69 F. Supp. 661, the situation becomes even clearer. In *Flannery* the lower court held that the provision in the 1928 Manual permitting cancellation of fraudulent discharges and proceeding against the accused was invalid. It is of interest to note also in that case, that in discussing the question of fraud, the court said that the determination of the existence of any fraud would first have to be determined by a court, not a court-martial. I am well aware that *Flannery* was reversed by stipulation in the Circuit Court. I am also advised of the circumstances allegedly leading to the stipulated reversal, one of which was the release of *Flannery*.

Insofar as Article 3(c) is concerned, it may be one of those self-evident situations that exist without a statute. This is the provision governing a deserter who may receive a subsequent discharge. I am aware of the one or two lower court

holdings to the effect that a Service could not go behind a discharge. I am also aware of the amenability to jurisdiction if a man is in fact a deserter. Dependent upon which of these two lines control, it appears the situation will continue to prevail regardless of the statute.

There is one situation in which I think the Services can regain jurisdiction. I have reference to the *Hirshberg* case, 336 U. S. 210,⁴ which actually was the main reason for the enactment of Article 3(a) as it existed before *Toth*. In reading *Hirshberg* I was struck by the fact that no one apparently gave any consideration to the question of the statute of limitations which would appear to be the strongest argument that could be advanced. It may be that *Hirshberg* can be changed by the suggested approach and/or by deleting the present Manual coverage on offenses in prior enlistments; at most it appears fairly certain that a proper statute will cover it.

The point I am trying to make is that when the military sets up rules on not trying offenses in prior enlistments, I think they are infringing on the right of the Congress to enact statutes of limitations. Let us take two men who tonight pull off a robbery. One of the two men had his enlistment expire today and he signed over prior to the offense. The other man's enlistment is up tomorrow and he then signs over. We then have the totally indefens-

³ U.S. ex rel. *Flannery v. Commanding General*.

⁴ U.S. ex rel. *Hirshberg v. Cooke*.

ible situation of a three-year statute of limitations for the first man but a one-day statute for the second fellow. Admittedly, either the State or, under some circumstances, a Federal court could try the second person; but, that is no real answer, particularly when the claim for the necessity of our military jurisdiction is based on the dictates of morale and discipline. The situation would become particularly acute if instead of the crime of robbery, it involved an offense that was purely military in nature so that punishment was forever precluded by reason of a one-day statute of limitations. Historically, there may have been some good basis for this prior enlistment approach. I am reasonably familiar with the contract theories in this regard. I note also that in *Hirshberg* the Supreme Court said, but did not rule, that for many years the Services had been under the impression that they could not try a man for an offense committed in a prior enlistment without statutory authorization from the Congress. If such statute is in fact necessary it should not be difficult to draw.⁵ The question of jurisdiction to try should only be concerned with whether the accused is in the Service and whether the statute of limitations has run.

After *Toth* was decided some people argued that it clearly threw out subdivisions (11) and (12) of Article 2. Apparently, Judge Tamm of the District of Columbia District

Court was satisfied that this was its result. He ruled that the Air Force had no jurisdiction to try Mrs. Covert for an alleged homicide that occurred in England while she was there as the dependent wife of her Air Force husband who was stationed there. It has been claimed that a reading of the Majority and Dissenting Opinions in *Toth* show that the Supreme Court will throw out subdivision (11) either unanimously or by 8 to 1. It has also been argued that *Toth* settles only *Toth* under Article 3(a) and nothing more, that in all probability the Supreme Court will reverse Judge Tamm's decision. It is also argued that without the authority in subdivision (11) it will be impossible to conduct proper military operations overseas. In reply to this, it is argued that the Voice of America, the Foreign Aid and similar programs seem to be functioning without the necessity of criminal jurisdiction over civil employees, and that the Navy did so for years. Generally, the arguments contain more heat than light. At this point it appears to me that the most important thing is to obtain a final ruling in the *Covert* case.⁶ When that is had we shall at least know under what rules we operate regardless of our present personal opinions.

If the Supreme Court should throw out Article 2(11) (and then Article 2(12) would seem necessarily to follow) it is unquestionable

⁵ But limit the statute to the Hirshbergs, forget about the Toths.

⁶ U.S. ex rel. Clarice B. Covert v. Reid, H.C. #87-55 U.S. D. Ct. D.C., Decided November 22, 1955.

that new legislation will have to be submitted. Already it seems necessary that some action should be taken to salvage Article 3, at least to the *Hirshberg* extent, unless the entire thing is to be abandoned. But, assuming the situation indicated, it is my opinion that almost all of the provisions of Article 2 could stand careful study. An examination of the hearings on the Uniform Code of Military Justice show that the provisions of Articles 2 and 3 were generally approached solely on a factual desirability, not on a question of legality or constitutionality. Outside of General Green there were probably only two or three witnesses who even raised any questions of law. Interestingly enough, one witness, Mr. L'Heureux, hit the *Toth* situation right on the nose. He told the Committee that when the Founding Fathers used the term "cases" arising in the land and naval forces, they meant cases, not causes of action.

The following subdivisions are those found under Article 2.

Under that part of (1) covering volunteers, inductees and other persons called to duty, it might be possible to raise factual difficulties regarding the effective dates of the jurisdiction. I mention this for what it is worth.

Insofar as (2), (7), (9) and (10) are concerned, I attempt no discussion. They respectively cover cadets, persons serving a court-martial sentence, prisoners of war, and persons with the armed forces in the field

in time of war. I can envisage some nice questions that could arise in regards to discharged persons serving a court-martial sentence when it comes to certain alleged military offenses.

Subdivision (3) covers reserve personnel on "inactive duty training" which seems somewhat of a misnomer if not contradictory. This particular part of Article 2 probably received more attention from the various witnesses on the Uniform Code than any other item in either Article 2 or 3, with the possible exception of the *Hirshberg* situation. I suppose the entire approach to reserve jurisdiction depends on whether the Federal Courts will consider the reserves as being actually part of the land and naval forces. If they do not, then it appears jurisdiction over reserves may be limited to their active duty periods.

Under (4) retired regulars are subject to military jurisdiction. How, for once, the retired reserves got the better of the situation and were omitted, I do not know. I have difficulty conceiving of any sound distinction between two retired officers, one with a Class ring and the other with a degree from MIT, who have each served 30 years and are both receiving the same retirement pay. It is of interest to note that during the hearings, Bob Smart, counsel for the Committee, raised the question of possible Class legislation, but it was lost in the shuffle. I am well aware of the

⁷ Major General Thomas H. Green, then The Judge Advocate General of the Army.

fact that there are holdings that retired officers are subject to court-martial jurisdiction. I am also aware that there can be exceptions to the rule and that statutes are supposed to have some sound basis and justification. It might be difficult to show the necessity for court-martial jurisdiction over a retired officer with complete physical disability, maybe a basket case, a hopeless lunatic in an asylum, or one whom circumstances have caused to become a low-grade moron, who, while harmless, is also mentally helpless. I wonder whether it could be successfully argued that such retired officers were always on duty and subject to recall at any time.

One further aspect of this retired personnel situation is of interest, if only for purely selfish reasons.⁸ In that regard I refer to the fact that this Administration, like all others, has appointed certain retired members of the military to important civilian positions in the Government. According to the news reports some members of Congress have expressed strong doubts about the advisability of this procedure. I take no stand on this aspect, other than to say that if a man is unquestionably able, it seems unfortunate to be deprived of his services. However, it might be of interest to speculate what the reaction of these,

and other members of Congress, would have been if the prospective nominee had mentioned that when he took over as the 'independent' head of this independent civilian agency, he was also subject to military jurisdiction at all times. You may be getting close to a two-master set-up. By the same line of reasoning you can approach the same difficulties in regards to such retired personnel obtaining important positions with private business firms which do business with the Government and, as necessarily follows, often engage in protracted disputes with the Government.⁹

The retired reserves receiving hospitalization under (5) is bypassed at this time.

In regards to the Fleet Reserve under (6) it is noted that the *Fenno* case, 76 F. Supp., 230, upholds that jurisdiction. It is suggested that after reading *Fenno* it might be wise to again read all opinions in *Toth*. Then read Dig. Ops. JAG 1912, p. 1010, where the then JAG of the Army said that a statute conferring court-martial jurisdiction on the inmates of the Soldiers Home was unconstitutional. Some of the reasoning in that opinion will not reconcile with *Fenno*; actually it may have effect on your retired personnel generally, under (4).

⁸ The selfish aspect does not affect me personally as I will never get even reserve retirement unless the Gods of War worsen our fortunes before I am age sixty. I have the dubious distinction of being one of the most inactive reserves in the continental U. S. From the increasingly severe tone of the letters I have been receiving from the AF it appears that I may soon be an ex-reserve.

⁹ It is possible the head of such firm might suggest the Retiree should look for some executive job involving a rake or a broom.

Subdivision (8) is your personnel of the Coast and Geodetic Survey, Public Health Service and "other organizations" when they are assigned to and serving with the armed forces. Assuming that they in fact become part of such armed forces there probably cannot be too much difficulty, and assuming the term "other organizations" is not all-inclusive. Perhaps it must be further assumed that the personnel there mentioned means "uniformed", i.e., military personnel, and not civilians. If civilians are considered to be included then, at least in peacetime, this part of that subdivision may also depend upon the final result in *Covert*.

Subdivision (11), in brief, covers all civilians serving with, employed by, etc., the armed forces overseas. While that is not a precise statement it will do for the purpose of this discussion. This is the part that Judge Tamm struck down in the *Covert* case. Historically the Army and the Navy had exactly the same approach as to there being no peacetime jurisdiction over civilians. The military authorities appear unanimous, see *Winthrop, Davis and Dudley*; see also CMO 129, 1918; 11,1937, pp. 16 and 18. They parted company when the old AW 2(d) went into effect in 1917. This, for the first time, purported to give the Army peacetime jurisdiction over civilians overseas. They continued to remain apart in this regard until UCMJ became effective. It may be remembered that during

World War II the Navy, despite serious trouble with Merchant Mariners in the Pacific, did not move against them until Congress provided special statutory wartime jurisdiction in 1953. Between the first and second World Wars the Navy apparently was not interested in peacetime jurisdiction over civilians overseas. See CMO 11, 1937, pp 16 and 18, covering situations at Guantanamo Bay and in the Pacific areas.¹⁰

Incidentally, if the *Covert* decision is upheld by the Supreme Court it then appears that new legislation providing jurisdiction over civilians will have to be drawn under Section 2 of Art. III of the Constitution, which authorizes the Congress to set the place or places for trials of offenses not otherwise covered in the Constitution. (See *United States v. Bowman*, 260 U.S. 94, on statutes of universal application.) It is my own thought that in any redrafting of the jurisdictional coverage it would be well worth while to study the original hearings on the Uniform Code, and to study them in the light of, and in connection with, all subsequent court holdings.

I personally hold, and have held for a long time, decided views regarding the question of the constitutionality of Articles 3(a) and 2(11). I do not give my personal views because I doubt that they would prove anything, and I further question that it would be proper to give the same in print in

¹⁰ Don't sell the Navy CMOs short when it comes to Constitutional holdings.

view of the litigation now pending in the courts. However, for your own use, I believe that I can reduce the question of whether or not Article 2(11) is constitutional, to its lowest common denominator, so to speak. I am sure that most lawyers will at first immediately reject my formula, some will never accept it, but if you give it some thought you may feel otherwise. Perhaps you will come to the conclusion that even though it seems too simple to be true, it does in fact pose the ultimate proposition. Shorn of unnecessary verbiage and divorced from partisan claims, it

appears that the constitutionality of Article 2(11) is dependent on whether the fact that a person is outside of the United States is alone sufficient to permit the Congress to constitutionally subject him to the criminal jurisdiction of the military in time of peace. After you are through rejecting the proposition, then compare your civilian employees of the military in London and those at Fort Myer. Find the difference between your dependent wives and families at Newport and those at Naval installations abroad. Then tell me what the other differences are.



STATEMENT OF POLICY

The Judge Advocates Association, an affiliated organization of the American Bar Association, is composed of lawyers of all components of the Armed Forces. Membership is not restricted to those who are or have been serving as judge advocates or law specialists.

The Judge Advocates Association is neither a spokesman for the services nor for particular groups or proposals. It does not advocate any specific dogma or point of view. It is a group which seeks to explain to the organized bar the disciplinary needs of the armed forces, recalling, as the Supreme Court has said, that "An Army is not a deliberative body," and at the same time seeks to explain to the non-lawyers in the armed forces that the American tradition requires, for the citizen in uniform not less than for the citizen out of uniform, at least those minimal guarantees of fairness which go to make up the attainable ideal of "Equal justice under law."

If you are now a lawyer, if you have had service in any of the Armed Forces or are now connected with them in any capacity, active, inactive, or retired, and if you are interested in the aims herein set forth, the Judge Advocates Association solicits your membership.

Article 2(11) UCMJ Held Unconstitutional

Judge Edward A. Tamm of the United States District Court for the District of Columbia has held Article 2(11) UCMJ unconstitutional in an oral opinion granting the writ of habeas corpus on November 22, 1955, in the case of United States ex rel. Clarice B. Covert v. Curtis Reid.

Mrs. Covert, a civilian, residing with her husband, a member of the United States Air Force in England, had been convicted by a General Court Martial there convened by the Air Force of the premeditated murder of her husband. The United States Court of Military Appeals reversed and remanded the record of trial to The Judge Advocate General of the Air Force for rehearing or other action. Pending the retrial scheduled to take place at Bolling Air Force Base in Washington, Mrs. Covert's attorney, Frederick B. Wiener, applied to the District Court for the writ. Because this opinion is of general interest and unpublished, it is here set forth in full.

THE COURT: In the present case, the petitioner while residing with her husband, a member of the United States Air Force in England, took the life of her husband and, of course, was subject to court martial under the provisions of Section 552 of Title 50 of the United States Code, the Air Force taking the position that this petitioner was a person accompanying the armed

services abroad within the terms of this provision of the Code.

The case raises the very interesting question again of whether this petitioner as a civilian is entitled to the constitutional guarantees of the Fifth and Sixth Amendments or whether she was properly tried by court martial.

The Fifth Amendment, of course, exempts from its provision as to due process those cases arising in the land or naval forces. The law appeared, until a few weeks ago, to have been rather definitely settled as to what constituted a case arising within the armed or naval forces, but the decision of the Supreme Court of the United States in the case of United States of America ex rel. Audrey M. Toth, petitioner, vs. Donald A. Quarles, Secretary of the Air Force, decided on November 7, 1955, has virtually turned inside out a great many earlier decisions especially in Courts of Appeal and in United States District Courts.

It is true that the Toth case on several occasions refers specifically to the fact that Toth was an ex-soldier. He is described as a civilian ex-soldier. But the teaching of the case insofar as it relates to the right of the person to his constitutional guarantees in the face of court martial charges is that Toth was a civilian.

It does seem to this Court that the significant phraseology of the

Toth case must be predicated upon the understanding that the Supreme Court is dealing with the rights of a civilian. The Supreme Court has decided that a civilian, even though he was in the military service at the time he committed a crime, is entitled to a trial by the civil courts. In short, the Supreme Court says—a civilian is entitled to a civilian trial.

Applying this principle to the present case, the Court must conclude that in this case the petitioner appears to be entitled to a trial by the civil courts. The Court believes that it is required to grant the writ of habeas corpus in the present proceeding.

The Court recognizes that there are great difficulties inherent in the Court's ruling today, because admittedly the military services have major and difficult problems in dealing not only with the civilians attached in official capacities but with the civilians who are members of

the families of the armed forces on foreign stations.

I do believe that the problem created is one which is of ready solution by the Congress. There appears to be no difficulty in enacting statutes which would confer upon the District Courts of the United States the jurisdiction to try cases arising on these foreign stations in the same manner that crimes on the high seas are tried at the present time.

It seems that the Congress could legally declare that a civilian could be tried in the first jurisdiction in which the civilian is brought or in the jurisdiction where the civilian is found, in the same manner that the statutes now provide for this type of jurisdiction in cases involving crimes on the high seas.

I don't think the Court's observations in this regard are essential to its disposition of the present case. The Court will grant the writ in the present case.

THE 1956 ANNUAL MEETING

The Tenth Annual Meeting of the Judge Advocates Association will be held at Dallas, Texas, on August 28-29, 1956, during the week of the American Bar Association convention there. Col. Gordon Simpson is Chairman of the committee on arrangements. He advises that he has reserved the "swankiest" club in town for our annual banquet. If the facilities available for judge advocates can be thus described by a Texan, we can be assured that they will be grand and wonderful. Reserve these dates on your calendar now.

Messy Areas in the Administration of Military Justice

At the meeting of the Board of Directors held in November 1954, the Secretary of the Association, Colonel Frederick Bernays Wiener, JAGC, USAR, presented a paper under the foregoing title, listing matters which he felt should be presented to the Armed Forces, through the Association, with a view to remedying alleged defects quietly and intramurally rather than through more public media.

His paper was referred to the Association's Committee on Military Justice, composed of the following: Colonel William J. Hughes, Jr., AUS Ret., Chairman; Lt. Col. Nicholas E. Allen, USAFR; Lt. Col. Louis F. Alyea, USAF; Colonel Charles L. Decker, JAGC; Lt. Col. James M. Hamilton, JAGC, USAR; Colonel J. Fielding Jones, USMCR; and Captain S. B. D. Wood, USN. The Committee submitted the basic paper to the three Judge Advocates General, and, after obtaining their comments, submitted a report to the Board of Directors.

Action on the report was postponed pending study by the Board, and was called up for disposition at the meeting held on 15 October 1955.

There are set forth below, seriatim, the points presented by Colonel Wiener; the Committee's report thereon; and finally the vote taken by the Board. Where necessary, re-

visions and additions have been made to render current the points discussed, e. g., by adding references to the UCMJ amendments now pending in Congress.

I. A. The Wiener Paper:

I. A. The Wiener Paper: "*Preliminary Investigations by CID, OSI, ONI*. The prevalence and the kind of preliminary investigations routinely conducted at military installations of every allegation of wrongdoing on the part of military personnel is one of the most disturbing features of the current administration of military justice.

"a. So far as can be ascertained, every offense is investigated by the CID, etc., not simply those where investigative techniques are necessary to uncover unknown facts. The simplest open-and-shut charges are routinely turned over to the CID.

"b. Moreover, CID and OSI agents who are enlisted men and warrant officers routinely investigate allegations against commissioned officers, apparently on the view that their status as members of the CID or OSI is sufficient to supply the deficiency in seniority otherwise existing. In one recent case, a full colonel was interrogated as to the offense of which he was suspected, by a CID agent who was a chief warrant officer.

"c. The average CID and OSI agent has no real investigative qualifications, and is not interested in obtaining the facts, but only in getting convictions. This can easily be documented by reference to particular cases.

"d. The "lie detector" is used as a matter of course, even though Director J. Edgar Hoover of the FBI has stated that it does not produce a reliable determination of guilt or innocence, and even though "lie detector" testimony is wholly inadmissible in court. It is however much relied on—except the times it appears to indicate innocence. There are indications too that it is an effective instrument for changing witnesses' testimony.

"The net of the matter is that, whereas in the past the services disciplined themselves, now they are disciplined by the CID, etc., and by the polygraph."

I. B. The Committee Report:

"1. Enlisted Men as Investigating Agents:

"It was the consensus of opinion that enlisted investigators are well trained specialists and that in all three services they are principally used in connection with the more serious offenses. When it is apparent that an offense has been committed but the offender is unknown, a professional investigator is a practical necessity. Usually the ascertainment of the offender results in charges in which event a commissioned officer takes over under Art. 32. We deprecate the ideological anomaly of an enlisted man grilling

a commissioned officer; however, the C.I.D. and O.S.I. man is usually polite, indeed far more so than a commissioned officer investigator is likely to be. While all professional investigators develop in time a sort of slant toward prosecution there is no indication enlisted men are worse in this respect than other corps of professional investigators. Most of the Committee felt, from personal experiences, that C.I.D. and O.S.I. investigators show a rather high degree of objectivity—the result of careful drilling to that end by superiors. In any event, no substitute for such investigators has been suggested.

"As to the use of lie detectors, the Committee agrees with Colonel Wiener that such use should be limited to more serious offenses such as is indicated in the Air Force directive of 19 October 1954. We likewise agree with Colonel Wiener that the lie detector should be an investigative aid and should not be used as a substitute for investigative effort. The Committee agrees too that there are certain long-term dangers involved in the use of lie detectors. Trial counsel are tempted to put in evidence a refusal of the accused to submit to a lie detector test. While this is no doubt reversible error at present some future Wigmore may argue courts into admitting such a line of testimony. Promiscuous use or attempted use of lie detectors will produce inevitable harmful results along the line of compulsory self-incrimination, injection of collateral matters into trials, etc. (See Note, 6 Stanford Law Rev. 165)

"Where an *accused* demands a lie detector test, the Committee is of the opinion that the grant or denial of his request should be left to the discretion of the convening authority."

I. C. Board Action: The Committee Report was adopted, 9 to 8.

II. A. The Wiener Paper:

"Article 32 Pretrial Investigation. Does the Article 32, MCM, ¶34, pre-trial investigation really do any good or serve any useful purpose?"

"Where the witnesses against the accused are civilians living off the post, he is not aided, as the Investigating Officer has no power of subpoena. In such cases, the pre-trial investigation is little more than a time-consuming formality.

"Where however the witnesses are present, defense counsel has an opportunity to go "fishing" and to discover the prosecution's case—rights not accorded him in civilian criminal practice.

"Why not eliminate the pre-trial investigation completely except where the convening authority feels that the pretrial statements do not give a sufficiently clear picture of what actually happened?"

II. B. The Committee Report:

"Should Pre-trial investigation under Art. 32 be abolished?"

"Your Committee feels the pre-trial investigation serves a useful purpose; indeed the armed services can point to it with pride as exceeding any comparable protection in civilian life. The Committee is inclined to take the viewpoint of

the Judge Advocate General of the Army who feels it should be limited to developing probable cause for trial. Thus it would parallel Grand Jury functions in the civil courts, though with added safeguards against rubber stamp action at the behest of prosecuting officers. The right to have defendant's counsel present and the further right, *de jure*, of the accused to appear before the investigating officer are obviously favorable to military defendants.

"The Committee deprecates the tendency to formalize pre-trial investigations to the point where errors therein could constitute the basis for trial reversals. Pre-trial investigations should not be full-dress trials in themselves and any further tendency in that direction will lead to a movement for their abolition, which your Committee opposes.

"As to giving investigators power of subpoena, your Committee notes that the F.B.I., the Secret Service, etc. have no such power. We are thus inclined to think subpoena powers are unnecessary to make civilian witnesses talk. Our experience is rather to the contrary, most civilian witnesses are all too voluble, particularly where they can help the accused. Furthermore the Committee disfavors increase of military powers of subpoena in the sensitive area of contacts with civilians; the possibility of abuse and of the cry of "military tyranny" seem obvious."

II. C. Board Action: The Committee Report was adopted.

III.A. The Wiener Paper:

"Staff JA as Senior Prosecutor. A second most truly disturbing feature of the present system is the extent to which the Staff JA, who is supposed to act on the charges in a judicial capacity and then thereafter to review the record of trial in the same capacity, in fact functions as the senior member of the prosecution staff, furthering the obtaining of convictions. Here are some instances of Staff JA conduct drawn from actual personal observation:

"Item: The Chief of the Military Justice Division of the Staff JA office, whose duty it would have been to review the record of trial for legal sufficiency in the event of a conviction, assisted trial counsel in the course of the trial to interview and prepare prosecution witnesses.

"Item: In the course of a trial there arose a question of admissibility, which was duly argued at side-bar. Defense counsel submitted a memorandum of law on the point, but the law officer indicated that he desired further authorities, and the trial was adjourned until the following day. When defense counsel arrived at the Staff JA office to use the library, trial counsel and the Staff JA were in conference discussing the law memorandum which defense counsel had submitted at the side-bar conference. If there had been a conviction, how could the Staff JA possibly have reviewed impartially the question under consideration?

"Item: An officer was acquitted on serious charges, and thereafter submitted a general resignation. Staff JA, after announcing the acquittal was a miscarriage of justice, impeded forwarding of resignation and required officer to submit to psychiatric examination.

"What makes these instances so disturbing is the fact that they are openly justified as means "to insure that military justice throughout the command is properly administered." See remarks at Army JA Conference, 1953, *Supervision of Military Justice*, by Lt. Col. A. M. Scheid, JAGC. Since "to insure that military justice throughout the command is properly administered" means in actual effect, to insure that convictions are obtained, the fact of the matter is that the most important determination made in the course of a case is the Staff JA's pretrial slant as to guilt or innocence: that carries through.

"In this connection, it is not amiss to recall that many of the letters of censure that convening authorities in World War II directed to members of courts-martial, a practice roundly criticized after the war and subsequently prohibited by Congress (AW 88 of 1948; Art. 37, UCMJ), were initiated by Staff JAs who were incensed because their own pretrial views of the accused's guilt had not been sustained by the findings of the court-martial.

"It is not without significance either that the Code Committee has recommended that the prohibitions against censure of courts-martial contained in Art. 37, UCMJ, be

broadened to include the Staff JA among the individuals who are forbidden to criticize. Sixth Recommendation, *Annual Report, USCMA etc., 1952-1953*, pp. 6, 7. Such a recommendation could hardly have been evoked in the absence of specific instances demonstrating its need.

[Amendment to Article 37 appears as Sec. 1(j) of S. 2133 and H.R. 6583, the UCMJ amendments now pending in Congress.]

"It is far easier to diagnose the disease than to find a remedy. In the British Army, there is a separation of functions, in that the officer who recommends trial is not the officer who reviews the record of trial for legal sufficiency. Unless we are prepared to adopt that solution, then the only remedy is to stress, through provisions in the MCM and through suitable indoctrination, that the Staff JA's functions are judicial and not prosecutory."

III. B. The Committee Report:

"Staff J.A. as Senior Prosecutor:
"Out of excess of caution it might, at first glance, seem desirable to prohibit a Staff J.A. from reviewing the record of any trial with which he has had a prior contact. This, however, would result in depriving the convening authority of the assistance of the senior law officer in his command, the officer presumably most fitted by experience and training to offer mature advice on disciplinary matters. It would also deprive trial counsel of the legal advice of the more

experienced lawyer in the matter of what to prove and how to do the job. We see nothing intrinsically wrong in these contacts with the Staff J.A. (Cf. *U.S. v. Haimson* 5 USCMA 208; 17 CMR 208). Certainly such contacts are *de minimis* compared with the Staff J.A. recommending trial and then later advising the convening authority as to guilt or innocence, sentence, etc.—the statutory system, sanctified by tradition. As Judge Learned Hand said in weighing somewhat similar policies in *Gregoire v. Biddle* 177 F. (2) 579, 581:

'As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative.'

"We think it too late to recommend change in the basic functions of Staff J.A.'s. As a practical matter and whatever the British system, there is no way to establish a "recommending" Staff J.A. and, another person, a "reviewing" J.A.—we've got to combine both functions in one officer and trust to his decency and good sense in acting in both capacities. We go along with Colonel Wiener however in suggesting a word of caution; we condemn with him any assumption by the Staff J.A. of the role of outright prosecutor but as to activities this side we must put our trust somewhere. From our own contacts and experiences we do not think Staff J.A.'s ordinarily overstep the mark."

III. C. Board Action: The Committee's Report was adopted.

IV.A. The Wiener Paper:

"Lack of Open-Mindedness in Boards of Review. This is a third outstandingly messy area, and currently the greatest weakness in the appellate process.

"It is essentially a defect of attitude, a feeling on the part of BR members that their function is to review convictions in order to affirm—to affirm if at all possible, but to affirm in any event, whether possible or not. Too often a BR makes findings in defiance of evidence; too often a BR produces a short-form holding where substantial questions of law are involved, after which review is granted by the CMA.

"It is significant that, whereas Army BR opinions appearing in the first 8 volumes of the Court-Martial Reports averaged 301 pages per volume, those appearing in the last 4 published (vols. 15-18 CMR inclusive, the last available when this paper went to press) average only 64 pages per volume. And only 31 pages of 18 CMR are devoted to Army BR opinions.

"In arguing a case before a BR, a lawyer should have the same feeling he has when arguing a criminal appeal in a U. S. Court of Appeals, viz., that he is presenting propositions of law to an open-minded tribunal. In fact, such a feeling is frequently not possible. Indeed, except for the purpose of establishing datum points en route to the CMA, it is often a waste of the lawyer's time and the client's money to argue a case before a BR.

"There is much talk about the "independence" of BRs. But the

only way to insure independence in fact is to take the BRs out of JAG offices. They should be placed in the Secretary's office; at least one member should have civilian status; and their membership should be subject to change only with the Secretary's concurrence. As a corollary, their present power over sentences should, in the interests of uniformity, be placed in the hands of the JAG concerned."

IV.B. The Committee Report:

"Alleged Lack of Open-mindedness of B/R's:"

"This is a matter of opinion which your Committee has been unable to resolve by any objective test. A short form holding is like a *per curiam* affirmance; the natural reaction is irritation and too many such holdings would evidence distrust of court for counsel. After all when lawyers of standing and proved ability brief and argue a case before the Board their effort ought in most cases to merit a line or two of reasoned discussion particularly where, as occasionally happens, the ability of the advocate is not inferior to that of the judge. At the same time it must be confessed that in the military regime the requirement of compulsory review even where no substantial error can be assigned, tends to produce a "short form" frame of mind. The B/R's ought to be on their guard against the growth of any such attitude. The remedy we think is in proper supervision of B/R personnel by the Judge Advocate General of each service. That offi-

cer ought to be able to perceive detrimental trends in the various boards; he ought to be able to scent bias, conscious or unconscious, intellectual apathy or staleness on the job. We would prefer to rely on him to apply corrective measures rather than as suggested, put the B/R's in the Secretary's Office. The Committee is opposed to the latter as a type of unnatural divorce; the B/R's are where they should be; no such radical movement upstairs seems in any way desirable. Such a change would in the end result in complete civilian B/R's functioning apart from the J.A.G.'s as private advisers—house counsel—to the Secretary. This would be quite detrimental. It must not be forgotten that the discipline of the Armed Forces is the end object of the court martial system. We are not prepared to put an important part of it—the B/R's, in the hands of civilian lawyers. Furthermore if J.A.'s are not used in such important work a real career inducement will be lost.

"The Committee is divided five to two as to Colonel Wiener's suggestion that clemency powers in appellate review should be taken away from the B/R's and vested in the Judge Advocate General. A majority would prefer the latter. Uniformity of sentences as suggested by Colonel Wiener is an adequate reason but there are other reasons based on continuity of policy and good administration. Colonel Decker and Colonel Alyea prefer the present system."

IV.C. Board Action: The Board approved the Committee Report.

V.A. The Wiener Paper:

"Trial Procedure. One of the truly great reforms accomplished by the Uniform Code of Military Justice has been the improved conduct of trials; it is only necessary to compare, at random, trial records being currently compiled and those dating from the 1920 or even the 1948 Articles of War. A trial by GCM today need not fear comparison with a criminal trial in any U. S. District Court.

"But both the Code and the MCM still contain vestiges of the earlier procedure, and do not reflect the extent to which the Law Officer has become more and more the counterpart of the presiding judge at a civilian criminal trial.

"Item: The members of the court can still overrule the LO on a motion for findings of not guilty—an obvious confusion of function, as the Code Committee has recognized; its Third Recommendation is that Art. 51(b) be amended to make the LO's ruling final on such a motion. *Annual Report, USCMA, etc., 1952-1953*, p. 5.

[Recommendation appears as Sec. 1(n) of the pending bills to amend the UCMJ.]

"Item: The Manual (App. 8a, p. 510) still calls for the presentation of legal authorities to the court-martial. But the USCMA has considerably limited the right to do so. *Fair & Boyce*, 2 USCMA 521. It would be preferable to adopt the civilian rule, viz., law is only for the judge, i. e., the LO.

"Item: The court-martial still takes a copy of the MCM into closed session. In view of the emphasis now routinely placed on correct instructions, it is obvious that this practice may render such instructions nugatory. After all, no jury after being charged by the trial judge takes a set of Wigmore and Wharton into the jury room."

V.B. The Committee Report:

"Trial Procedure:

"The Committee agrees with Colonel Wiener that the Law Officer's rulings on matters of law should be final, particularly in the important matter of a motion for a finding of not guilty. Not only is there at present, as Colonel Wiener says, a "confusion of functions"—the present practice in effect makes a lay court judge of the law and the facts. This is not without judicial precedent but it seems clearly an undesirable system. If Colonel Wiener's suggestion is adopted there would be no reason for reading the Manual to the Court prior to trial, nor any reason for the Court to take the Manual into closed sessions when deliberating on their findings. The latter should be prohibited in any event."

After the foregoing was formulated, Col. Decker withdrew his assent to depriving the court of use of the Manual in considering its findings and sentence. He pointed out that the widespread practice of exceptions and substitutions and the resultant variety of sentences dependent thereon required, as a practical matter, that the court

should be able to use the Manual which sets forth those matters with particularity. Col. Hughes was inclined to agree with Col. Decker's views.

V.C. Board Action: The Board rejected the Decker-Hughes amendment, and adopted the Committee Report as written.

VI.A. The Wiener Paper:

"Confinement Practices. The system whereby convicted officers and non-commissioned officers are confined in disciplinary institutions while still holding their rank, and under which personnel are restored to duty under a conviction pending appellate review, is obviously unsound.

"a. At present, officers are confined in the USDB while they are still officers. Heretofore, under the 1948 Articles of War, they were never sent to a USDB until after completion of appellate review and execution of their sentences; at that point, the GCMO was issued, announcing the time when they ceased to be officers of the Army, and when that time arrived, they were sent to the USDB as general prisoners—and so treated.

"Now, however, they are sent there while still officers. But in fact they are, while in such status, actually treated as general prisoners; their photograph and fingerprints are broadcast; and they are regularly brought, while appellate review is still pending, before parole and restoration boards. Since those boards will not act during the pendency of the appellate pro-

ceedings, the procedure is a ghastly farce—but the authorities at a USDB do not distinguish between the several categories of their inmates except for a few formal record-keeping purposes.

"It has accordingly happened that an officer upon conviction was sent to a USDB, that his fingerprints and photograph were sent broadcast to law enforcement officers at his home, that he was degraded in the DB just as a general prisoner would be—only to be released when his conviction was reversed, and, upon rehearing, to be acquitted. This, obviously, is an injustice to the individual—and it hardly makes for the dignity of the officer status so essential to military discipline. (Similar considerations are applicable to convicted NCOs.)

"If any individual is to be regarded and treated as already convicted once the convening authority has acted, then, plainly, the appellate processes have been to that extent rendered nugatory.

"True, those processes involve delays; so do appellate processes in the civilian system; but in the latter system there is provision for bail pending appeal if the questions on appeal are substantial.

"Indeed, it might well be that confinement of accused persons in a USDB pending completion of appellate review would violate Art. 13 of the Code, since in the vast majority of cases such confinement would be "more rigorous than the circumstances require to insure his presence."

"Pending a re-thinking of the entire problem, the most feasible solu-

tion would seem to be the creation, for officers and NCOs sentenced to confinement, of special confinement facilities; in other words, a return to the pre-1951 practice."

"b. An analogous facet of the problem is what to do pending appellate review with officers sentenced to dismissal only, and with officers and NCOs who have served their term of confinement and are still awaiting final action on their cases when confinement ends.

"Very plainly, the usefulness of such personnel is nearly nil.

"The Army has a solution of sorts, relieving non-Regulars from further active duty pending completion of appellate review; *quaere*, however, what the effect of such relief would be in the event a rehearing were ordered.

"Here again, fundamental re-thinking is called for."

VI. B. The Committee Report:

"Confinement Practices:

"The Committee agrees with Colonel Wiener that detention of anyone, officers or non-coms, in a D.B. during appellate review is extremely undesirable. It is justifiable only in extreme cases where the accused, guilty or not guilty, is an apparent menace to the public or where as in death or life sentences close confinement is required for security. We all know the problem of the undismitted officer and the common desire of C.O.'s to get him out of camp in any way possible. There is, however, no magic solution to this problem; certainly it does not lie in mass shipments to what is

equivalent to a penitentiary. The Committee feels that special detention centers are impracticable by reason of expense. On the whole we feel that for the present at least the problem must be solved by each of the services and the major commanders.

"Pending legislation if enacted would enable the services to dismiss officers and non-coms immediately and reinstate them later if required by the outcome of the case. Such powers would seem desirable. Of course in the case of reserve officers, such officers can be inactivated at any time and this affords at least some answer to the problem.

"It is noted that the Navy does not confine officers with enlisted personnel prior to actual execution of the sentence."

VI.C. Board Action: The Board adopted the Committee Report.

VII.A. The Wiener Paper:

"Unnecessary Delay. One of the avoidable delays in the system of appellate review established under the UCMJ involves the service of Board of Review opinions.

"a. The regular procedure seems to be to serve the opinion on the JAG concerned so that he may decide whether or not to certify the case. Only after such determination has been made is the BR opinion transmitted to the accused.

"Once a BR has published its opinion it should be served simultaneously on The JAG and the accused; there should be no preview for the one not available to the other.

"b. There are still unexplainable delays in effecting actual service of BR opinions on an accused, far greater than there should be what with world-wide air mail service available. (In one instance personally observed, it took more than two weeks for a B/R opinion to reach the USDB at New Cumberland, Pa., from Washington—a distance of less than 125 miles.)

"Regulations should provide for preferred dispatch of such opinions and for maximum use of red-bordered letters of transmittal.

"c. Elimination of the delays considered under a and b above will actually save far more time than the proposed 15 day reduction in the time permitted for petitioning CMA for review; Twelfth Recommendation of the Code Committee, *Annual Report, USCA etc. 1952-1953*, p. 8."

[Section 1(x) of the pending bills reduces the time for petitioning CMA for review to 15 days.]

VII.B. The Committee Report:

"Unnecessary Delay in Publishing of B/R's:

"The Committee agrees with Colonel Wiener that decisions of the B/R's should be served simultaneously on counsel for the Government and the accused. The publication of the opinion to the various services is another matter; strictly speaking the accused has no interest in it either way; it should be left to the discretion of the respective T.J.A.G.'s."

VII.C. Board Action: The Board adopted the Committee Report.

VIII.A. The Wiener Paper:

"Unnecessary Review. Convictions following pleas of guilty should not be subject, as at present, to the same review as other cases. *Accord:* Fourth Recommendation of Code Committee, *Annual Report, USCMA etc., 1952-1953, p. 6.*"

[Implemented in part by Section 1(u) of the pending bills.]

VIII.B. The Committee Report:

"Review of Cases Involving Pleas of Guilty:

"The Committee agrees with Colonel Wiener that cases involving pleas of guilty need only be reviewed by the Military Justice Division for jurisdictional defects, legality of sentence, etc. and possible clemency."

VIII.C. Board Action: The Board adopted the Committee's Report.

IX. In concluding its report, the Committee said:

"The Committee is indebted to the Air Judge Advocate General for his careful analysis of Colonel Wiener's comments and to the Judge Advocates General of the Army and of the Navy for their views and assistance.

"The Committee feels that Colonel Wiener has done a public service in bringing these matters to the light of public discussion."

X. The Board of Directors, after approving the Committee's report as indicated, voted to publish the Wiener paper and the report of the Military Justice Committee thereon in this Journal for the information of the members of the Association and to make distribution of this material to appropriate Service chiefs, Service Secretaries and legislative Committees.



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New Stars in Navy and Army JAGO

Rear Admiral William R. Sheeley

William R. Sheeley, a forty-eight year old native of the Commonwealth of Kentucky, reported for duty as The Assistant Judge Advocate General of the Navy with the rank of Rear Admiral on November 15, 1955.

The Admiral received his education at Marion Military Institute, the University of Kentucky, and at the U. S. Naval Academy, from which he graduated in June, 1930. Upon graduation from the Academy, he resigned his commission and was appointed Ensign, USNR. He then attended the Jones Law School at Montgomery, Alabama, where he obtained his law degree. Thereafter, until he was ordered to active duty in December, 1940, he was privately engaged as businessman, banker, farmer, lawyer, and manufacturer, making his home at Dadeville, Alabama.

The active Naval service of the Admiral has been active indeed. His assignments, beginning in December, 1940, have taken him from BuPers to the Naval War College, and from there, successively, to duty as Flag Lieutenant on the staff of Commander Task Force Ninety-Nine, USS Washington, flagship; Chief of Staff to Commander Task Group Thirty, USS Massachusetts, flagship; Operations Officer for Task Groups under the command of Commander Cruiser Division Six on the USS

Wichita and USS Minneapolis; Chief of Staff to the Commandant of the Tenth Naval District, San Juan, Puerto Rico; Operations Officer on the Staff of Commander Service Force, Atlantic Fleet; Instructor at the U. S. Naval Academy; District Legal Officer, Eighth Naval District, New Orleans, Louisiana; Commanding Officer of the School of Naval Justice, Newport, Rhode Island; Assistant Legislative Counsel, OTJAG; member of the staff of the Commander in Chief, Atlantic Fleet as Fleet Legal officer, Assistant Chief of Staff for Administration, and later as Director of Legal Affairs; and since November, 1952, District Legal Officer of the Twelfth Naval District, San Francisco, California.

His war-time service with the Pacific Fleet merited him the Commendation Ribbon and Combat "V". He was awarded the Legion of Merit for his service with the Tenth Naval District.

Admiral Sheeley is a member of the Alabama bar and has been admitted to the bar of the Supreme Court of the United States. He is a member of the American Bar Association.

During Admiral Sheeley's tour as The Assistant Judge Advocate General of the Navy, he will reside at 204 Juniper Lane, Falls Church, Virginia, with his wife, the former Leila Langford of Stockton, California, and Honolulu, Hawaii.



U.S. Navy Photograph

Rear Admiral William R. Sheeley, U.S.N.



U.S. Army Photograph

Brigadier General Stanley W. Jones, U.S.A.

Brigadier General Stanley W. Jones

Stanley W. Jones was promoted to the rank of Brigadier General on September 24, 1954, and designated The Assistant Judge Advocate General of the Army for Military Justice.

The General was born in New York City on May 19, 1907. He was graduated from the United States Military Academy in 1929 and commissioned as 2nd Lieutenant, Infantry. Following graduation from the Infantry School and the Tank School at Fort Benning, Georgia, he entered the Law School of the University of Virginia in 1939 and was graduated with honors in 1942. Very recently, General Jones completed the Advanced Management Program given at the Harvard School of Business Administration.

He has been fully engaged as an Army lawyer since 1942. His successive assignments have been: Judge Advocate, 85th Infantry Division, Camp Shelby, Mississippi; Judge Advocate, XII Army Corps, Fort Jackson, South Carolina; Judge Advocate, Fourth Army, at Monterey, California, and at Fort Sam Houston, Texas; Judge Advocate, Ninth United States Army, ETO; Judge Advocate, Second Army, Fort

George G. Meade, Maryland; Deputy Judge Advocate, European Command, Heidelberg, Germany; Judge Advocate, Seventh Army, Stuttgart, Germany; Chairman of Board of Review No. 1, JAGO; Chief of the Defense Appellate Division, JAGO; Chief of the Military Justice Division, JAGO; Executive Officer of the Office of TJAG; and, his present assignment as Assistant Judge Advocate General for Military Justice.

General Jones has been awarded the Legion of Merit, Bronze Star, Army Commendation Ribbon with Cluster, Belgian Croix de Guerre, and the Netherlands Order of Orange Nassau. He has three Battle Stars for World War II service with the Ninth U.S. Army in France, Holland and Germany.

He has been admitted to the bar of the Commonwealth of Virginia and to the bar of the Supreme Court of the United States. General Jones is a member of the Order of the Coif and a member of the Judge Advocates Association.

The General is married to the former Frances Buckley of Brooklyn, New York, and has two daughters. General and Mrs. Jones make their home, during the present tour of duty, at the Barcroft Apartments in Arlington, Virginia.

A LONDON MEETING IN 1957?

The 1957 annual meeting of the American Bar Association will be held in New York during the week of July 8th and reconvened in London, England, on July 24th. The Board of Directors of the Judge Advocates Association has appointed a committee composed of Col. Charles L. Decker, Col. Frederick B. Wiener, and Col. Osmer Fitts to study the desirability and feasibility of a London meeting of JAGs in 1957. If you are interested in the JAA meeting in London in 1957 please advise the national headquarters.

Recent Decisions

of the Court of Military Appeals

Jurisdiction Over Civilians

Robertson (Navy), 5 USCMA 806,
27 May 1955

The accused was convicted under Article 118 of unpremeditated murder of a fellow seaman while their vessel was docked in Yokohama, Japan. The accused was a civilian crew member of the vessel which had been allocated to the Military Sea Transport Service and the transportation of military cargo. The vessel was owned by the National Shipping Authority and operated by a private company under a general agency agreement. The accused was not a Civil Service employee, but had been hired through a union hiring hall. On petition to CMA, the accused contended that the court-martial was without jurisdiction. The homicide occurred ashore and not on board the vessel. CMA held that the accused was a person subject to military jurisdiction while aboard the ship as a person accompanying the Armed Forces and that he did not lose this status when he stepped ashore. Once ashore in Japan, he would be subject to trial by a Federal civilian court only for crimes injurious to the United States which would not include homicide. Therefore, the only American tribunal that had jurisdiction over the ac-

cused was the court-martial. Being a person accompanying the Armed Forces within the meaning of Article 2 (11) he was subject to the court-martial jurisdiction. The record was remanded for further proceedings because of the failure of the law officer to instruct upon the offense of involuntary manslaughter, that lesser offense being raised by the accused's pre-trial statement which was admitted in evidence wherein the accused stated he did not intend to injure or kill the victim and the Government's evidence concerning the victim's physical condition making him likely to die of the slightest blow. But see *Covert v. Reid*, U. S. Dist. Ct. D. C. decided 22 November 1955 holding Article 2 (11) UCMJ unconstitutional; this case is reported in this issue of the Journal. See also *Toth v. Quarles*, U. S. Sup. Ct. decided 7 November 1955 also discussed in this issue in the article "Jurisdiction, If Any."

Insanity

Bunting (Navy), 6 USCMA 170,
22 July 1955

The accused Marine was convicted of unpremeditated murder, robbery and aggravated assault. The sole issue at the trial was the mental responsibility of the accused and

issues arising out of the conflicting medical testimony on that subject. The board of review concluded as a matter of fact from all the evidence that they had reasonable doubt as to the sanity of the accused at the time of the offenses and, therefore, set aside the findings and sentence and dismissed the charges. TJAG certified the question to CMA as to whether the board as a matter of law erred in its analysis of the testimony and abused its discretion. CMA held there was no error in the board's action. The board's decision involved a factual determination of an evidential dispute. Since boards of review may weigh evidence, judge creditability, and determine controverted questions of fact and since the record would sustain a finding of either sanity or insanity, it was within the discretion of the board to make a conscious and informed choice of either conclusion. Thus, if the evidence would sustain a finding of insanity, it would support a holding that the Government had not established sanity beyond a reasonable doubt.

Covert (Air), 6 USCMA 48,
24 June 1955

The accused, a civilian, was tried by court-martial in England for the premeditated murder of her husband, a Serviceman. The evidence indicated that the accused killed her husband with an axe while he was asleep, then took a heavy dosage of drugs and retired for the evening with her dead husband. At the trial, the accused testified, but had no detailed recollection of the

events and could give no reason for her act. It developed that on the day preceding the homicide, she had consulted with a psychiatrist and on the day following, she went to the psychiatrist and told him that she believed that she had killed her husband. At the trial, the psychiatrist testified that the accused was suffering from a psychotic depressive reaction and was unable to distinguish right from wrong and adhere to the right and was, therefore, irresponsible for her actions. This testimony was supported by that of a clinical psychologist who characterized the accused as a totally irresponsible psychotic who would not have been deterred from the homicide by the presence of a policeman or "the entire Army". The prosecution's expert witnesses, however, were of a different opinion, expressing doubts upon her ability to premeditate and some question concerning whether her ability to adhere to the right was impaired, but all agreed that she would have been deterred from the commission of the crime if a policeman were present on the basis that it would serve as a "slap in the face". The law officer instructed the court that if the accused would not have committed the act if a policeman had been present, she could not be said to have acted under an irresistible impulse. He did not instruct the court on the effect of the expert testimony on the issue of premeditation. From a conviction on certification and petition, the Court held that the failure of the law officer to instruct the court to the effect that they might consider the

mental deficiency of the accused short of legal insanity in determining her capacity to premeditate was prejudicial error. The Court expressed the view that the evidence before the court-martial would not have warranted a finding of mental irresponsibility as a matter of law, but that a rehearing was required for a proper application of the "presence of a policeman test" since that test is directed to the effect upon the accused of the likelihood of immediate detection of the crime and apprehension rather than the shock effect of bringing the accused back to realities. See *Covert v. Reid*, U. S. Dist. Ct. D. C. decided 22 November 1955 wherein habeas corpus issued for want of military jurisdiction over civilian. This opinion is set forth in this issue of the Journal.

Insanity—Stay of Appellate Review

Washington (Army), 6 USCMA 114,
1 July 1955

The accused was convicted of premeditated murder and sentenced to death. Prior to trial, there was a determination that the accused was sane and the issue of insanity was not raised at the trial. A board of review affirmed the finding of guilty, but approved the sentence to the extent of a DD and confinement at hard labor for life. The Judge Advocate General certified the case to the Court on the authority of the board of review over the sentence. After the board's decision had been served upon the accused, it appeared that the accused was becoming progressively insane. While

the matter was pending before the CMA, the defense moved for a stay of the proceedings, except on the certified question, until there was a determination of the accused's mental capacity to file a petition for review. CMA determined to undertake no further proceedings until the accused regained his sanity. Judge Brosman, writing the principal opinion, held that insanity on the part of an accused person arising during the appellate processes does not deprive CMA of jurisdiction to conclude the review. In this, Judge Quinn concurred. Judge Latimer, however, disagreed with this conclusion stating that when a person becomes insane, all proceedings are stayed. Judge Quinn indicated that he would proceed with the case and complete appellate review, but the majority indicated a preference not to proceed further until the accused had regained his sanity. Judge Latimer reached this conclusion on the basis that the Court could not, as a matter of law, complete the proceedings, whereas Judge Brosman reached that result as a matter of exercising discretion. It would seem that the reason the Court refused to act results from the fact that the accused had been sentenced to death. CMA has held that a board of review cannot commute a sentence (*Goodwin* 5 USCMA 647). Therefore, if CMA had affirmed the findings and sentence of the trial court, the accused might be put to death while insane. Perhaps the Court would have reached a different result where the legal sentence was not the death sentence.

Self-Incrimination

**Ball (Army), 6 USCMA 100,
24 June 1955**

The accused was convicted of forgery, Article 123. As part of the Government's case over the objection of the defense counsel, exemplars of the accused's handwriting were admitted into evidence. It appeared that the accused had been interrogated at length by a CID investigator who had not warned the accused of his rights under UCMJ and who told the accused that if he told the truth, he would get off with a minor charge or sentence. Thereafter, he was warned of his rights and was asked to prepare some handwriting samples, which the accused furnished the investigator. On petition of the accused, it was contended that the exemplars were improperly admitted into evidence on the ground that an investigator must not only refrain from directing a suspect to furnish samples for identification, but he must also warn the accused specifically of his right to refuse to furnish them. CMA held that there was no error in the admission of the exemplars in evidence, holding that the language of Article 31b relating to the warning of rights prior to interrogating or requesting statements from an accused is directed toward testimonial utterances alone. The Court held that handwriting exemplars, although demanding conscious action on the part of the accused and the exercise of voluntary processes, do not constitute a statement nor does a request for them involve interrogation. Ac-

cordingly, the Court held that an accused need not be warned of his privilege to refuse to furnish handwriting samples and a handwriting specimen is inadmissible only when obtained under some form of compulsion. See also Rosato, 3 USCMA 143; Eggers, 3 USCMA 191; and Green, 3 USCMA 576.

**Holmes (Air), 6 USCMA 151,
1 July 1955**

At the scene of an explosion and fire involving Government vehicles in a motor pool, evidence was found leading to the accused. Investigators without a warning under Article 31 asked the accused to show the clothing that he had worn that evening whereupon the accused showed the investigators the clothing which had an odor of gasoline about it. At the trial for attempted larceny of gasoline and negligent damage to Government vehicles, the law officer sustained the defense objection to questions and answers of the accused made at the above mentioned investigation, as to "any answer made by the accused". A pre-trial confession was received in evidence in which the accused admitted that the fire had been started by his lighting a match to see how much gasoline he had siphoned out. From a conviction, TJAG certified the case to CMA which held that there was prejudicial error. The law officer's ruling striking testimony concerning the answers of the accused did not have the effect of instructing the members of the court to disregard the accused's act of identification of his clothing. Requesting the accused to identify his

clothing was an interrogation. When the investigator questioned the suspect concerning the offense, the suspect's reply was a statement involving an affirmative conscious act on his part and, therefore, within the meaning of Article 31.

**McGriff (Army), 6 USCMA 143,
1 July 1955**

In the pre-trial investigation of a bad check case, the investigating officer obtained signature of the accused to a number of documents relating to the pre-trial investigation. At the trial, the defense attempted to show that the signatures were made involuntarily in that the investigating officer had made the accused stand in a corner facing the wall during the interrogation. The documents were admitted in evidence as authenticated exemplars of the accused's handwriting. The law officer held that these handwriting specimens were voluntarily obtained and, therefore, admissible. CMA held there was no error. Specimens of handwriting are inadmissible if obtained by compulsion. The prosecution's evidence, however, justified the law officer in concluding that the specimens were voluntarily given. Therefore, the burden shifted to the accused to show compulsion. The Court found that the evidence offered by the accused with reference to the "standing in the corner" did not indicate compulsion or that the accused was deprived of his mental freedom to refuse to give the requested samples of his handwriting. More than an indication of involuntariness must be shown by the accused to render

his handwriting specimens inadmissible.

Post Offense Urinalysis Used to Impeach Accused

Accused was convicted of wrongfully using narcotic drugs. The defense attempted to explain the presence of morphine revealed by urinalysis shortly after the offense and certain scars on the forearm in conjunction with his general denial of ever having used narcotics. On cross-examination and over objection, the accused admitted to submitting to a urinalysis several days after the offense and the Government was allowed to show that the second urinalysis also revealed the presence of narcotics. The law officer permitted the evidence of the second urinalysis on the issue of the creditability of the accused as a witness. On petition of the accused, CMA held that there was no error. By taking the stand and denying that he ever used narcotics, the accused placed his creditability on that issue in question and, therefore, extrinsic evidence of the subsequent act of misconduct became admissible to impeach his veracity.

Corroboration of Confession

**Payne (Army), 6 USCMA 225,
5 August 1955**

The accused was convicted of the wrongful use of habit forming drugs. As a suspect, he voluntarily submitted a sample of his urine for analysis. The official report was negative, but the chemist-toxicologist was permitted to testify that although the report was negative

following the rigid requirements of an official report, nevertheless, the sample of urine reacted positive to all but one test out of six. The accused made a confession which was admitted in evidence, but on petition to CMA, the defense contended that the confession should not have been considered because the official report was negative and, therefore, the corpus delicti of the crime had not been established. CMA held that there was no error. Although the official report was negative, there was evidence that as to five of the six tests required for an official report, the result showed a probability of the presence of morphine which would be sufficient to establish the corpus delicti and corroborate the confession.

**Morris (Air), 6 USCMA 108,
24 June 1955**

The accused was convicted of burglary with the intent to commit larceny, Article 129. At midnight an intruder in a nurse's bedroom lost a fatigue hat in his flight, which was later traced to the accused. After being advised of his rights under Article 31, the accused stated that the only reason he entered the nurses' quarters was "to find some money or something of value". This pre-trial statement was admitted in evidence over the objection of defense counsel who contended that there was no other evidence outside of the confession sufficient to show an intent to commit larceny. On petition of the accused, CMA held that there was no error. The Court recognized that an uncorroborated confession

is not sufficient to support a conviction and that under military law, the probable existence of every element of the offense charged, except that of identity, must be established by independent evidence. The Court, however, found that it could be inferred from the circumstances that the accused probably had an intent to commit larceny at the time he entered the room in the nurses' quarters and this was sufficient corroboration of the intent stated in the confession.

Entrapment—The Right of the Defendant to Call the Informer as a Witness

**Hawkins (Army), 6 USCMA 135,
1 July 1955**

A stockade guard was convicted of the wrongful possession of heroin. A Treasury Department Agent and three CID investigators turned over some marked money to an informant who was a prisoner in the stockade. On the following day, the accused left the camp and upon his return was taken into custody and a search of his person revealed an envelope containing heroin and one of the marked bills. The accused admitted that the stockade prisoner had requested him to buy some narcotics as a favor and that he did so with the money furnished by the prisoner. The theory of the defense was entrapment. The defense counsel on direct and cross-examination of the Treasury Agent and other prosecution witnesses attempted to secure the name of the informant and the instructions given to him, but the law officer prevented this

line of questioning on the theory that public policy forbid the disclosure of such information. The defense then made an offer of proof to the effect that if the witnesses had been forced to answer, they would name the stockade prisoner as the informant, that they would have to admit they furnished him with the money and instructions to contact the accused with a request that he obtain the narcotics and that the whole plan was conceived by the investigators to induce the accused to commit the offense. The defense counsel also requested the presence of the stockade prisoner as a defense witness, but the law officer denied the request. On petition of the accused, CMA held that the law officer's rulings were prejudicial error. Recognizing the privilege of communications made by informants to public officers engaged in the discovery of crime, CMA held that the stockade prisoner in this case was more than an informant since he played a part with the accused in the very transactions upon which the Government relied to prove its case. The Court held that even if there was a true informer involved, the privilege is subject to the qualification that when the identity of testimony of the informant is necessary or essential to the defense, the accused may compel a disclosure of that information. The accused was blocked in every attempt to establish his defense of entrapment by the rulings of the law officer, and he was, therefore, prejudiced by the law officer's erroneous rulings.

Effect of Evidence in Mitigation Upon Guilty Plea

Wright (Navy), 6 USCMA 186,
22 July 1955

Upon a guilty plea, the accused was convicted of wrongful appropriation. In an unsworn statement presented in mitigation, the accused said that at the time of the offense he was so drunk he didn't know what he was doing. The guilty plea was not withdrawn. Before the board of review, the defense asserted that the evidence offered in mitigation showed that the guilty plea was improvidently entered and that it should have been withdrawn by the law officer. On certification by TJAG, CMA held the court-martial was not required on its own motion to withdraw the guilty plea and proceed with trial on the merits. Although wrongful appropriation requires a specific intent which could not be formed under certain degrees of intoxication, there was no claim here by the accused that his intoxication was such as affected his mental faculties and ability to form the intent. Therefore, it could not be considered that the unsworn statement was inconsistent with the plea or that the plea was improvidently made.

Knowledge as an Element of Wrongful Use of Narcotics

Greenwood (Army), 6 USCMA 209,
5 August 1955

The accused was convicted of wrongfully using a narcotic drug. The law officer's instructions were that if the accused *honestly and*

reasonably labored under the mistaken belief that the beer and cigarettes used by him were not contaminated by narcotics, he should be acquitted. On Petition of accused, CMA held the instruction erroneous but not prejudicial. An honest want of knowledge wholly apart from its reasonableness is sufficient as a defense on a charge for wrongfully using a narcotic drug and if the defense is properly raised, the accused is entitled to an instruction founding his criminal responsibility on the absence of an honest ignorance or mistake of fact without regard to the reasonableness of such ignorance or mistake of fact. CMA held that the evidence did not reasonably raise the issue of lack of knowledge, however, and that the instruction, although erroneous, was not prejudicial.

Morning Report Entry as Proof of Apprehension

Simone (Army), 6 USCMA 146,
1 July 1955

The accused was convicted of desertion terminated by apprehension, Article 85. The only evidence showing apprehension was an extract copy of the morning report which reported: "app civ auth Bklyn NY & rtn mil cont Conf Ft Jay NY EDCSA 10 Sept 54 & conf post stockade eff 14 Sep 54." On petition, it was contended the evidence was insufficient to support a finding of apprehension. CMA held the extract of the morning report sufficient evidence since the information contained in the morning report

is required to be reported by regulations, and there was no evidence to indicate that the reporting official failed to properly perform his duty as required by the regulation. Since findings of guilty of AWOL, breach of arrest, escape from confinement have been held to rest safely upon official entries in morning reports, there seems to be no reason why the entry concerning apprehension should be insufficient to support such a finding.

Accumulation of Errors—Right to Counsel, Impartial Investigation, Highly Ranked Court

Parker (Army), 6 USCMA 75,
24 June 1955

The accused soldier was convicted of two offenses of rape, Article 120, and one offense of assault with intent to commit rape, Article 134, and was sentenced to death. An officer, who participated actively in the investigation of the crime which connected the accused as the offender and who was present when the accused confessed to some of the offenses, was appointed the investigating officer under Article 32. Two days after the appointment, the case was referred to trial but one day before the trial date, a new court was appointed presided over by a Brigadier General and the trial was had before this court on which there were new trial and defense counsel. The accused had only a thirty minute consultation with his defense counsel three days prior to trial. No challenges were made on behalf of the accused. No request for instructions was made

by the defense; no testimony was offered for the accused and no attempt toward mitigation was made. On mandatory review and petition, the accused urged that he was not adequately represented by counsel. CMA held that although there was ample evidence to support the findings, the cumulative effect of the numerous errors was such as to result in unfair and unjust proceedings. Among the errors found by the Court were these: There was no impartial investigation under Article 32. The convening authority picked a powerful court for an isolated trial and speedily ordered the case to trial on the day after the appointment of the court with a new defense counsel thereby accelerating the prosecution. Without assigning reason, the convening authority failed to follow the recommendation of the SJA to commute the death sentence. The record was silent as to whether the accused had been advised of his right to have enlisted men on the court and the defendant was not adequately represented by defense counsel. Considering the deficiencies of defense counsel, the Court observed that the defense counsel had not consulted with prosecution witnesses prior to trial, he did not examine members of the court on voir dire, exercised no challenges, objected to testimony only twice, submitted no requested instructions, made no exceptions to the instructions given, offered no testimony for the accused on the merits of the case or in mitigation of the sentence. The Court concluded: "We wonder how any counsel could do less—". Judge Quinn

dissented saying: "I am not persuaded by speculations to find that the defense counsel here was incompetent. — I have a feeling that the majority is disturbed by the death sentence".

**Thomas (Army), 6 USCMA 92,
24 June 1955**

In this mandatory review case in which the accused was convicted on four specifications of premeditated murder, the Court observed that the accused was afforded every right in every stage of the proceedings and expressed praise for the performance of counsel. Comparing the case with the Parker case, the Court said: "One need only to compare the record of this proceeding with the one recording the conviction of Parker to be convinced that a much higher level of achievement can be attained when convening authorities seek to meet the spirit and intent of Congress as expressed in the UCMJ".

Effective Assistance of Counsel

**Best (Army), 6 USCMA 39,
17 June 1955**

Best was tried with two others at a common trial and convicted of murder, larceny and AWOL. The board of review held that Best was deprived of the effective assistance of counsel as to the murder charge by reason of the denial of his motion for severance, but affirmed as to the findings of guilty of larceny and AWOL. The accused then petitioned CMA, but meanwhile the murder charge came on for rehearing and the accused was again con-

victed and the findings and sentence were approved by the convening authority. Thereafter, CMA dismissed the petition as being premature. The accused then petitioned CMA urging that the court-martial on rehearing was without jurisdiction because the first trial was still pending before CMA and on the additional ground that the board of review erred in finding a deprivation of the effective assistance of counsel only as to the murder charge. CMA held that although the same case cannot be before more than one tribunal in the military justice system at a time, the first petition was in form a final order by the board of review and, therefore, did not transfer jurisdiction of the case to CMA. With regard to the contention that if the accused was deprived of the effective assistance of counsel as to the murder charge, he must be considered likewise prejudiced as to the other charges, CMA held that it was not inclined to limit the effect to particular charges of a several charge indictment. The Court, therefore, set aside the findings of guilty of larceny and AWOL and dismissed those charges.

Court Member, a Witness for the Prosecution

**Beer (Navy), 6 USCMA 180,
22 July 1955**

The accused charged with desertion was advised by the law officer that a member of the court had certified certain official documents which might be used in evidence. Nevertheless, the defense expressed

satisfaction with the court member's qualifications and exercised no challenges. The documents certified by the court member were later received in evidence thereby making the member a witness for the prosecution. On petition of the accused, CMA held there was no error. Although Article 25d(2), UCMJ, provides that no person shall sit as a member of a court when he is a witness for the prosecution, nevertheless, there was an intelligent and conscious waiver of any right to question the member's eligibility to participate in this case.

Restriction of Accused Pending Appeal

**Petroff-Tachomakoff (Navy),
5 USCMA 824,
27 May 1955**

An accused who had been sentenced to a BCD and confinement completed the period of confinement before completion of appellate review and was then placed in restriction. On petition to CMA, the accused contended that the restriction was imposed upon him solely because he had exercised his right to appeal to CMA. The Court held that if an accused was confined solely to discourage an appeal, a prosecution under Article 97 would lie, but the Manual authorizes convening authorities to take reasonable measures to insure the physical presence within their command of persons awaiting the completion of appellate review and restriction is a reasonable measure to accomplish that result.

Jurisdiction of Boards of Review

Petroff-Tachomakoff (Navy),
5 USCMA 824,
27 May 1955

In this case, the board of review affirmed the findings and sentence, but only two of the three members of the board participated in the decision. On petition of the accused, it was contended that a board of review lacks jurisdiction to pro-

ceed if less than three members are present and participating in the decision. CMA held that the long established administrative practice that two members of a board of review may hear and determine any case referred to the full board must be held to come within the Congressional grant of authority to The Judge Advocates General to create boards of review and to select their personnel.



The Judge Advocates Association is a national legal society and an affiliated organization of the American Bar Association. Members of the legal profession who are serving, or, who have honorably served in any component of the Armed Forces are eligible for membership. Annual dues are \$6.00 per year, payable January 1st, and prorated quarterly for new applicants. Applications for membership may be directed to the Association at its national headquarters, 312 Denrike Building, Washington 5, D. C.

A strong Association can serve you better. Pay your annual dues. If you are uncertain as to your dues status, write to the offices of the Association for a statement. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

The Journal is your magazine. If you have any suggestions for its improvement or for future articles, please bring them to the attention of the Editor. We invite the members of the Association to make contributions of articles for publication in the Journal. Publishability of any article submitted will be determined by the Editor with the advice of a committee of the Board of Directors.

Letter to the Editor

The article by General Bennett and Colonel Van Kirk entitled "Tyranny By Treaty" and appearing in the July issue of the Judge Advocate Journal (20 JAJ 8) is such a remarkable production that I feel constrained to reply to it. It is remarkable because, although apparently prepared for publication in a responsible Legal Journal, it is virtually devoid of any legal analysis of the subject involved.

"Tyranny by Treaty" consists almost exclusively of a highly emotional attack on the Status of Forces Agreement. This approach is made perfectly clear by the title of the article, by continual characterization of the Agreement as "unholy", "treacherous" etc., by much talk of "rape" of constitutional rights, by repeated attacks against proponents of the Agreement as unpatriotic and "feeble-minded one-worlders" (is this the way we argue in Court?), by the lengthy, somewhat hysterical, and totally irrelevant praise of the National Guard (and as a former Guardsman, I certainly agree with the authors that the Guard is a fine and worthy institution), by several misstatements of fact, and by numerous unwarranted and unsupported implications regarding foreign legal systems and the effect of the Agreement on American Servicemen stationed overseas.

Most of the largely hypothetical dangers which the authors attempt

to conjure up have been effectively explained and laid to rest in "The NATO Status of Forces Agreement", 18 JAJ 15, and by the testimony of Secretary of the Army Brucker and Deputy Under Secretary of the State Murphy, before the House Foreign Affairs Committee (see *Army Times* (Guard-Reserve Edition) August 6, 1955, p. 14). Moreover, in "Tyranny by Treaty", there is a total failure to set forth and analyze or discuss in a rational manner, any pertinent portions of the Agreement.

General Bennett and Colonel Van Kirk do take a brief look at some of the legal aspects of the Treaty, but one is forced to reach the conclusion that they found so little law to support their views that they felt compelled to fall back on flag-waving and name-calling.

The General and the Colonel seem to discern two "legal" objections to the Agreement. The first is that under the Constitution "Congress and Congress alone can make and prescribe the rules and regulations under which our men in uniform or the National Guard, when on active duty, must abide". This being so, they say, and it being axiomatic that a treaty cannot be made in conflict with the Constitution, then the Agreement, which in certain limited situations subjects United States Military personnel to laws made by legislative bodies other than Congress, must be invalid.

The difficulty with this proposition lies in its basic premise, i.e. that only Congress can make the rules by which our military personnel must abide. General Bennett and Colonel Van Kirk must certainly be aware that members of the United States Armed Forces (including National Guardsmen on active duty) are not removed, by reason of their military status, from amenability to State laws and local ordinances. These laws are certainly not made by Congress, and according to the theory propounded by the two Guardsmen, it would be unconstitutional for the Maryland authorities to arrest Pvt. Doe, RA-00000000, for a violation of that State's criminal laws. If this is true, many of us have missed numerous opportunities for acquittal of some of our clients! Actually, we all know this is not the law, and to paraphrase the article, our "boys" must "also abide by the grotesque and anomalous laws of whatever" State "in which they happen to be stationed. . . ." Thus, in Boston, one of them might be fined for taking a bath or travelling on Sunday. These ordinances are certainly "grotesque and anomalous", but it could hardly be argued that the United States Constitution prevents their enforcement as to servicemen. In Maryland, in a criminal case, the jury is the judge of the law as well as the facts. This also may be "grotesque and anomalous", but the Federal Constitution does not say that soldiers who commit crimes in Maryland cannot be tried and punished in accordance with Maryland law. And incidentally, by the

same token, the authors, while charging that the Agreement subjects "our lads" to a "possibility of double jeopardy", fail to note that in the United States, a soldier who commits a crime in New York City, for example, may be both court-martialed and also punished by the New York courts; cf. MCM (1951) par. 12. This is not double jeopardy, because different jurisdictions are involved.

Actually, it is perfectly clear that the exclusive power of Congress to regulate the Armed Forces relates only to *military* duties and matters connected directly therewith. Jurisdiction to punish offenses defined pursuant to this Congressional power is expressly reserved to the *sending* state under the Agreement (see 18 JAJ 15.) As to other matters, as has been demonstrated, Congress' power is merely concurrent. Therefore, "every rational man is" *not* "compelled to conclude" that the Agreement is in direct violation" of the power given to Congress to make rules "for the government of the land and naval forces." On the contrary, he is compelled to conclude just the opposite.

The second theory propounded by the authors is even weaker than the first. They cite numerous authorities stating the basic rule of International Law that a sovereign whose troops are passing through or stationed in a country with the consent of that country's sovereign, retains exclusive jurisdiction over the troops so stationed or so passing through. The Agreement, they say, violates this rule (and also the MCM, as to the legal effect of

which see Commissioner Tedrow's cogent remarks in 20 JAJ 41, et seq), and therefore is invalid. If the Colonel and the General cared to, they could find ample authority for the proposition that, at common law (and under our Constitution) the sovereign is immune from suit. Like the rule of international law relied on by the authors, this doctrine is valid and subsisting today. Yet, as we all know, equally well-known doctrine states that the sovereign may waive his immunity to suit—and this has been done in the Court of Claims Act, Federal Tort Claims Act, etc. Similarly, the provisions of the exclusive jurisdiction rule of international law may be waived by treaty or, perhaps, by executive agreement. This is a mere rule or doctrine, not a Constitutional provision, and waiver is both permissible and proper. In

fact, at 20 JAJ 16, the authors cite MCM (1951) par. 12. If they had set forth the full quotation, we would find that it reads: "This [immunity of visiting troops] is an incident of sovereignty *which may be waived by the visiting sovereign. . . .*" (emphasis supplied).

Finally, I do not attempt to argue that there is no room for disagreement regarding the wisdom of the Status of Forces Agreement. There may even be questions as to its legal validity. But when these problems are discussed in legal periodicals, is it too much to ask that the discussion be conducted on the level of reason rather than of emotion? The hasty, unlaywerlike, and misleading approach of the authors of "Tyranny by Treaty" does more harm than good to their cause.

WILLIAM H. ADKINS, II.*

* Of the Maryland bar. Mr. Adkins is a First Lieutenant, JAGC, USAR, and engages in private practice at Easton, Maryland. "Tyranny by Treaty" evoked many comments from the Journal's readers—many favorable, and some critical. The above letter is representative of the critical comments. The article itself best states its side of the controversial issue.



Please advise the headquarters of the Association of any changes in your address so that the records of the Association may be kept in order and so that you will receive all distributions promptly.

Reserve Training for Army JA's

By Frank Talbott*

The great need for a well trained, and readily available reserve force has of necessity received increasing attention since the involvement of United States forces in Korea. The recent passage of The Reserve Force Act of 1955 reflects the concerted effort being made to insure that the youth of this country shall receive up-to-date reserve training over a period of years. An integral part in the overall picture of current reserve training is the instruction received by reservists enrolled in the various branch departments of United States Army Reserve Schools located throughout the country.

The primary mission of the USAR School system is to provide for reserve officers not on active duty a readily available, progressive system of military education, paralleling as closely as possible the resident associate courses of Army service schools and The Command and General Staff College. The operation of this professional military educational system is of prime importance to the success of the judge advocate reserve training program. Potentially it is the most effective training medium for the instruction of judge advocates not on active duty.

At the present time there are 93 judge advocate branch departments offering 139 courses of instruction in USAR schools. Two three-year courses of instruction are conducted under the program, each yearly phase of instruction consisting of an inactive duty training period and an active duty for training period. These courses of instruction, designated "The Judge Advocate Associate Company Officer Course" and "The Judge Advocate Advanced Officer Course," are prepared at The Judge Advocate General's School and are administered locally in USAR schools by reserve instructor personnel. The advanced course currently is being expanded from three to six years. Thus, a sustained course of instruction over a nine-year period ultimately will result. The instruction offered in these courses parallels as closely as possible the resident instruction offered to the regular and advanced classes at The Judge Advocate General's School.

In order to insure maximum participation in the program, and in order to make the advantages of judge advocate USAR instruction available to those reservists who live in an area where no judge ad-

* First Lieutenant, JAGC—a member of the staff and faculty The Judge Advocate General's School.

vocate branch department is conveniently accessible, provision has now been made for the participation of a new category of USAR school students. The student in this category, although assigned or attached to a particular USAR school for certain administrative purposes, will complete the yearly inactive duty training phase of his USAR school work through extension course type instruction administered by The Judge Advocate General's School. The instruction will consist of correspondence courses completed by the student at home and returned to The Judge Advocate General's School for grading. All USAR school students, whether taking their inactive duty training by resident instruction in USAR schools or by means of correspondence courses, will complete the active duty for training phase by means of resident USAR school instruction at USAR school summer encampments. This "integrated program" of USAR school instruction is to be conducted during the current USAR school year on a pilot model basis in Judge Advocate and Command and General Staff departments of USAR schools.

The integrated program appears to offer a most positive approach to attaining the desired results from a reserve training program. The instructional material for both categories of USAR school students is prepared and kept current by constant revision at The Judge Advocate General's School in order to incorporate the continuous and rapid developments of interest to the military lawyer. It is substantially the same for both categories of students, paralleling the resident instruction offered at The Judge Advocate General's School to officers on active duty. The instruction is geared to a consistent effort over a course of several years in order to insure the utilization potential of the reservist for a maximum period. The program has been made readily available to judge advocates in every locale, consideration having been given to the fact that most of them are pressed for time due to active civilian practice and other business and personal affairs. The students receive retirement point credits, of course, for all USAR school work, regardless of the category of instruction in which they are enrolled.



What The Members Are Doing

California

Martin J. Dinkelspiel of San Francisco has been appointed Chairman of the A.B.A. standing committee on Scope and Correlation of Work.

Colorado

Milton J. Blake of Denver has been appointed Chairman of the A.B.A. standing committee on Legal Assistance to Servicemen.

District of Columbia

Brig. Hassan Mustafa, the Armed Forces Attache of Iraq, addressed a meeting of judge advocates in Washington on The Balance of Power in the Middle East on October 6, 1955.

Col. Thomas H. King is Chairman of the Committee on Military Law of the Bar Association of the District of Columbia. Membership of the committee includes John E. Curry, Nicholas E. Allen, and Richard H. Love. This is one of the Bar Association's most active committees.

Thomas G. Carney was recently elected President of the Metropolitan Police Boys Club in the District of Columbia. Tom Carney, a charter member of the Association, is actively engaged in the practice of law in Washington.

John E. Curry recently announced the removal of his office for the general practice of law to Suite

1013, Hurley Wright Building, 1800 H Street, N. W.

Lt. Col. Charles W. Wilkinson, presently assigned to the Procurement Law Division, JAGO, Army, recently received the A.B.A. Award for Professional Merit upon his graduation from the third Advanced Class of The Judge Advocate General's School at Charlottesville, Virginia.

Mastin G. White (2nd Off) was appointed a Commissioner of the United States Court of Claims on December 3, 1955.

Members of the J.A.A. in the metropolitan area of Washington met at the Naval Officers Club, Bethesda, on November 30th to honor Admiral William R. Sheeley upon his recent promotion to flag rank and his recent appointment as The Assistant Judge Advocate General of the Navy. Sharing the honor position of the evening with Admiral Sheeley was General Stanley Jones, Assistant TJAG of the Army, who was promoted to the rank of Brigadier General some time earlier, but who had not before been a special guest of the Washington members of the Association. The speaker of the evening was The Honorable Dewitt S. Hyde, member of Congress from the Sixth District of Maryland. Major General Mian Hayaud Din, Chief of the Pakistan Military Mission to the U.S., also spoke briefly about the relation of his

country to the West. The other distinguished guests included Gen. and Mrs. Eugene M. Caffey, Judge and Mrs. George W. Latimer, Gen. and Mrs. Reginald C. Harmon, Gen. George Hickman, Gen. and Mrs. Albert Kuhfeld, J. Weldon Jones, Chairman of the Tariff Commission, and Judge Whitney Gilliland of the Foreign Claims Settlement Commission. Almost 100 of the members of the Association in the area attended this very interesting meeting.

Hawaii

Col. Allan R. Browne, having recently retired from the active military service, is making his home at Honolulu. Col. Browne is applying for admission to the Hawaiian bar and is presently teaching a course in literature at the Punahon Academy in Honolulu.

Illinois

Robert J. Nolan (6th O.C.) recently announced the formation of a partnership to engage in the general practice of law under the style Mortimer, Nolan, O'Malley and Dunne with offices at 105 South LaSalle Street, Chicago.

Col. Robert L. Lancefield, Judge Advocate at Fifth Army, recently presented superior performance awards to Michael Navolio, civilian attorney on his staff, and to Miss Elizabeth O'Brien and Miss Agnes M. Cogan, civilian employees in the Judge Advocate's Office at Fifth Army Headquarters.

Iowa

Gen. Oliver P. Bennett of Mapleton was recently appointed Commis-

sioner for Insurance for the State of Iowa.

Maryland

Lt. Col. Raymond A. Egner, having recently completed a tour of extended active duty, announced that he has resumed the general practice of law with offices at 1101 Fidelity Building, Baltimore.

Massachusetts

Gen. Ralph G. Boyd of Boston has been designated Chairman of the A.B.A. Special Committee on Military Justice for the current year.

During the summer, Joseph F. O'Connell, Jr., of Boston, presided at a meeting of the New England Chapter of the J.A.A., at the Naval Officers Mess in Charlestown. Gen. Stanley Jones, Assistant Judge Advocate General of the Army, was the guest speaker. Officers of the chapter for the current year are: Thomas L. Hederson, Jr., President, John R. Sennott, Jr., Vice President, and Sherman Davison, Secretary-Treasurer.

Michigan

Col. Philip C. Pack of Lansing as Acting Adjutant General of Michigan recently requested a list of members in the State of Michigan for the use of the Governor in his appointment of a committee to formulate a state UCMJ.

Lt. Arnold M. Gold, having recently completed a tour of active duty with the U. S. Air Force, has returned to the general practice of law with offices in the Penobscot

Building, Detroit. The firm name is Hart & Gold.

John von Batchelder of Detroit recently announced the removal of his offices for the general practice of law to 350 Guardian Building.

Nebraska

Under the leadership of State Chairman Bernard E. Vinardi, judge advocates in the Omaha area have a weekly luncheon meeting at the Omaha Athletic Club. The group meets on Thursday of each week in the main dining room of the Club. Mr. Vinardi suggests that any members of the Association traveling through Omaha around noon on Thursday call him at the Law Department of the City Hall and arrange to attend the luncheon.

Oklahoma

George R. Taylor, until recently Assistant Commissioner of the Insurance Department of the State of Oklahoma, has resigned that office to return to the private practice of law. Mr. Taylor's offices are at 2230 N. W. 13th Street, Oklahoma City.

Pennsylvania

Thomas F. Mount of Philadelphia has been named Chairman of the standing committee of the A.B.A. on Admiralty and Maritime Law.

Lt. Paul Ribner, having recently completed a tour of extended active duty with the Air Force, has resumed private practice of the law with offices at Suite 1120, Robinson Building, Philadelphia. Mr. Ribner

has also been appointed Special Deputy Attorney General of the Commonwealth of Pennsylvania assigned to the Public Utility Commission.

Louis H. Artuso of Pittsburgh has been nominated for membership on the Executive Committee of the Allegheny County Bar Association.

Texas

Texas also holds the record for the number of lawyers in one family. Our charter members, Joe Wade of Beeville, is one of six brothers, all practicing attorneys. Joe Wade's father was a lawyer and those brothers who did not follow the law managed to marry daughters of lawyers.

Robert G. Storey, Jr., of Dallas, is Section Chairman of the Junior Bar Conference of the A.B.A. for the year 1955-56.

Utah

Brig. Gen. Franklin Riter of Salt Lake City was appointed by the National Commander of the American Legion a member of a three-man committee to investigate the operations and effect of the UCMJ pursuant to a resolution of the convention of the American Legion held last August in Florida requiring a committee to conduct an investigation and survey of military justice, military courts and the military court of appeals. Other members of the committee are John J. Finn of the District of Columbia and Carl C. Matheny of Detroit, Michigan.

Virginia

Maj. Gen. Franklin P. Shaw, until his recent retirement The Assistant Judge Advocate General of the Army, has returned to the private practice of law with offices in the Piedmont Federal Savings and Loan Association Building at Manassas.

Rutherford Day recently announced the opening of offices for the general practice of law at 1406 Courthouse Square, Arlington.

Wisconsin

Sverre Roang of Edgerton was named Judge Advocate General of the Veterans of Foreign Wars for the year 1955-56. Sverre Roang is active in veterans and civic affairs and presently holds a mobilization assignment with the Department of the Army Inspector General. He is Chairman of the State Democratic Convention in Wisconsin.



